

EXHIBIT D

Kevin Podlaski - November 17, 2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

MATTHEW BISONNETTE,)
)
Plaintiff)
)
-against-) Civil Action No.
) 1:15-cv-00334
KEVIN PODLASKI and)
CARSON BOXBERGER, LLP,)
)
Defendants)

DEPOSITION OF KEVIN PODLASKI

The deposition upon oral examination of KEVIN
PODLASKI, a witness produced and sworn before me, Karen K.
Keim, CRR, RPR, CSR-IL, CCR-MO, Notary Public, taken at
Kightlinger & Gray, LLP, One Indiana Square, Suite 300, 211
North Pennsylvania Street, Indianapolis, Indiana, on
November 17, 2016, and scheduled to begin at 9:30 a.m.

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ALSO PRESENT:

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<p style="text-align: right;">7</p> <p>1 START TIME: 9:39 A.M.</p> <p>2</p> <p>3 MR. JOHNSTON: Mr. Podlaski, welcome this</p> <p>4 morning, and I never want to fail to thank you for</p> <p>5 your 20 years of service to this country in the</p> <p>6 military.</p> <p>7 Let me be sure, Mr. Furman, that we are on the</p> <p>8 same page here. I have agreed to give up my right to</p> <p>9 take a 7-hour deposition of the firm and a 7-hour</p> <p>10 deposition of Mr. Podlaski separate, with the</p> <p>11 understanding that we're doing both depositions at the</p> <p>12 same time basically.</p> <p>13 Is that consistent with your understanding?</p> <p>14 MR. FURMAN: Yes.</p> <p>15 MR. JOHNSTON: Okay. Mr. Podlaski has been</p> <p>16 designated by the firm as the firm representative</p> <p>17 under the 30(b)(6) rule?</p> <p>18 MR. FURMAN: Correct.</p> <p>19 MR. JOHNSTON: Okay. Thank you. That will save</p> <p>20 me a lot of time, and I won't have to say does the</p> <p>21 firm think one thing, do you think something</p> <p>22 different.</p> <p>23 MR. FURMAN: That's completely understood.</p> <p>24 MR. JOHNSTON: Thank you, sir.</p> <p>25</p>	<p style="text-align: right;">9</p> <p>1 that comes up, please be sensitive to my ignorance on</p> <p>2 that subject. I will try to be accurate. If I'm</p> <p>3 wrong, don't hesitate to correct me in my use of an</p> <p>4 acronym.</p> <p>5 And let me just jump into marking a couple of</p> <p>6 exhibits first to speed things up. Let me show you --</p> <p>7 oh, I'm sorry. We've already marked the deposition</p> <p>8 notices as Exhibit 31.</p> <p>9 MR. FURMAN: Are they over here?</p> <p>10 (Pause)</p> <p>11 (Exhibits 31 and 32</p> <p>12 presented to the witness.)</p> <p>13 Q So I've marked as Exhibits 31 and 32 the deposition</p> <p>14 notices of the firm and of you, Mr. Podlaski. I</p> <p>15 assume you had a chance to review those or saw those</p> <p>16 at some point before today.</p> <p>17 A I need to talk to Mike for a second, so we need to go</p> <p>18 off the record.</p> <p>19 MR. JOHNSTON: Sure.</p> <p>20 (Discussion held off the record.)</p> <p>21 MR. FURMAN: Just want to put on the record, the</p> <p>22 reason we stepped out is in Exhibit 32 -- excuse me --</p> <p>23 Exhibit 31, attached to Exhibit A it states that</p> <p>24 Carson Boxberger is required to produce a witness that</p> <p>25 relates, at No. 2, to all occasions prior to Carson</p>
<p style="text-align: right;">8</p> <p>1 KEVIN PODLASKI,</p> <p>2 having been duly sworn to tell the truth, the whole truth,</p> <p>3 and nothing but the truth relating to said matter, was</p> <p>4 examined and testified as follows:</p> <p>5 DIRECT EXAMINATION</p> <p>6 QUESTIONS BY MR. RANDY JOHNSTON:</p> <p>7 Q Mr. Podlaski, can you tell me what you have done to</p> <p>8 prepare for your role to testify as the representative</p> <p>9 of the Carson Boxberger firm this morning?</p> <p>10 A Just reviewed the responses to Interrogatories; and</p> <p>11 although I didn't do it today, previously I reviewed</p> <p>12 some documents that were produced.</p> <p>13 Q Okay. And when you say "documents that were</p> <p>14 produced," you're talking about the document</p> <p>15 production in the case?</p> <p>16 A Correct.</p> <p>17 Q Emails, stuff like that?</p> <p>18 A Yes.</p> <p>19 Q Okay. Let me ask for an agreement with you that</p> <p>20 confesses my ignorance, first off. I have seen in the</p> <p>21 documents and learned in the course of this trial that</p> <p>22 people with military experience are real fond of</p> <p>23 acronyms and initials and the like, and I may not</p> <p>24 understand some initials that you might feel free to</p> <p>25 use, or alternatively, I may use them improperly. If</p>	<p style="text-align: right;">10</p> <p>1 Boxberger's representation of Matthew Bissonnette when</p> <p>2 it advised or assisted an author in connection with,</p> <p>3 I'm assuming, other occasions with respect to the</p> <p>4 pre-publication review process, and I thought we had</p> <p>5 already discussed that with the Court, and the ruling</p> <p>6 was that there would be no questions regarding other</p> <p>7 authors.</p> <p>8 MR. JOHNSTON: I understand your point and --</p> <p>9 MR. FURMAN: That was the reason we stepped out.</p> <p>10 MR. JOHNSTON: I understand. We can get into</p> <p>11 that. We'll probably step around that line, but I</p> <p>12 understand your position and the Court's ruling and --</p> <p>13 MR. FURMAN: Understood. I just wanted to make</p> <p>14 clear why we stepped out and what we discussed in the</p> <p>15 hallway.</p> <p>16 MR. JOHNSTON: Thank you.</p> <p>17 Q You have had the chance to review them before today?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 (Exhibit 33</p> <p>21 presented to the witness.)</p> <p>22 Q Let me show you what's marked as Exhibit 33. Do you</p> <p>23 recognize that as an unsigned copy of your Engagement</p> <p>24 Letter with Mr. Bissonnette?</p> <p>25 A That's what it appears to be.</p>

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<p style="text-align: right;">11</p> <p>1 Q And ultimately Mr. Bissonnette did sign that, correct?</p> <p>2 A He signed this or something like it, yes.</p> <p>3 Q Okay. And let me -- this is probably a good time to</p> <p>4 add this, Mr. Podlaski. There are a lot of documents</p> <p>5 in this case floating around, and sometimes there are</p> <p>6 drafts of documents. I have what I think are</p> <p>7 documents that are what they purport to be on their</p> <p>8 face. If subsequent to the deposition you determine</p> <p>9 that I have given you a document that is not what it</p> <p>10 purports to be, if there is a page missing, or it was</p> <p>11 an earlier draft, if you will let your counsel know so</p> <p>12 he can let me know, because it is my intent to rely on</p> <p>13 these at trial as exhibits, but I don't want to do</p> <p>14 that if I've somehow, through copying, stuck a wrong</p> <p>15 page in or something like that.</p> <p>16 MR. FURMAN: I think what we can do is take it as</p> <p>17 it comes, because for us to give a blanket assurance</p> <p>18 at this point --</p> <p>19 MR. JOHNSTON: I'm not asking a blanket assurance</p> <p>20 of anything other than you'll let me know later if you</p> <p>21 discover I don't have an accurate document.</p> <p>22 MR. FURMAN: Well, we'll do our best.</p> <p>23 MR. JOHNSTON: In fact -- well, I won't take the</p> <p>24 time to do it now, but I will point up that Exhibit</p> <p>25 No. 3, which Mr. Furman marked yesterday in the</p>	<p style="text-align: right;">13</p> <p>1 Q Are you reserving out something that my question</p> <p>2 includes when you give me that longer answer?</p> <p>3 A There is differing opinions about whether some of the</p> <p>4 assertions in the book are -- were classified, as your</p> <p>5 client testified to yesterday.</p> <p>6 Q All right. When did you first discover that there was</p> <p>7 any information in the book that other people would</p> <p>8 consider classified?</p> <p>9 A I'm pausing to answer that, because the August 30th</p> <p>10 letter from Jeh Johnson indicates the first formal</p> <p>11 notice that anyone believed the materials in the book</p> <p>12 contained classified information.</p> <p>13 Q Prior to that letter, did you have any concern about</p> <p>14 the book containing information in violation of</p> <p>15 Mr. Bissonnette's obligations to the Government?</p> <p>16 A That's a pretty broad question.</p> <p>17 Q Yes, sir.</p> <p>18 A But specifically, as I told Mr. Bissonnette one of the</p> <p>19 first times I spoke with him, that based on my</p> <p>20 experience I could review material for tactics,</p> <p>21 techniques, procedures, technical devices or -- and/or</p> <p>22 related to communications, but I don't know what I</p> <p>23 don't know. And there's something called</p> <p>24 "classification by compilation" that would enable</p> <p>25 foreign agents, persons who are schooled in</p>
<p style="text-align: right;">12</p> <p>1 deposition, has as an attachment the same letter with</p> <p>2 the signature, and you can compare them later. I</p> <p>3 simply didn't produce a signed one for purposes of</p> <p>4 this deposition today.</p> <p>5 (Exhibit 34</p> <p>6 marked for identification.)</p> <p>7 MR. JOHNSTON: And now let me mark as Exhibit 34</p> <p>8 what I believe to be a copy of all of the Carson</p> <p>9 Boxberger bills in this matter, and we will be</p> <p>10 referring to them. We'll ask for the same</p> <p>11 understanding. I'm not asking you to ratify here</p> <p>12 today that that's every bill or that every bill is</p> <p>13 accurate, but if there are some problems that come up</p> <p>14 where you don't believe that's what they are, let me</p> <p>15 know.</p> <p>16 MR. FURMAN: Will do.</p> <p>17 BY MR. JOHNSTON:</p> <p>18 Q Mr. Podlaski, as you sit here today, is it your</p> <p>19 contention that there is classified or confidential</p> <p>20 information contained in the published version of "No</p> <p>21 Easy Day"?</p> <p>22 A It's my opinion that the information contained within</p> <p>23 "No Easy Day" contains no classified information that</p> <p>24 is of concern to the United States with regard to its</p> <p>25 national security.</p>	<p style="text-align: right;">14</p> <p>1 intelligence gathering, to be able to take what</p> <p>2 appears to be innocuous information and piece it</p> <p>3 together, not only from his book but from other books</p> <p>4 or from open sources, and derive what would be</p> <p>5 operative -- excuse me -- would be operational</p> <p>6 intelligence.</p> <p>7 So as I told him from one of the first</p> <p>8 meetings -- or first telephone calls we had, "Your</p> <p>9 safest course is to submit the book for review,</p> <p>10 because you don't know what you don't know. I don't</p> <p>11 know what I don't know."</p> <p>12 Q And in your Answers to Interrogatories, you indicated</p> <p>13 you had a telephone call -- the first telephone call</p> <p>14 with him, I believe, if I'm remembering correctly, on</p> <p>15 January 18?</p> <p>16 A That's what I recall as well.</p> <p>17 Q Is it your belief that this conversation took place in</p> <p>18 that first phone call?</p> <p>19 A I think the first phone call we just generally talked</p> <p>20 about his military status, we talked about his</p> <p>21 concerns for security, we talked about his wanting to</p> <p>22 maintain anonymity, we talked about his contract with</p> <p>23 Dutton, and we talked about my background. That's</p> <p>24 what I recall.</p> <p>25 Q So is it your belief then that this telephone call</p>

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<p style="text-align: right;">15</p> <p>1 about compilation would have taken place in the second</p> <p>2 phone call that's referenced, which I believe you</p> <p>3 indicated was on January 25?</p> <p>4 A I believe so. I think the first phone call was</p> <p>5 between myself and Elyse Cheney and Matthew</p> <p>6 Bissonnette; and the second phone call was -- and that</p> <p>7 was on a land line, I'm pretty sure. And the second</p> <p>8 call was with Matt, and it was a cell phone call.</p> <p>9 Q Did you promise or represent to Mr. Bissonnette that</p> <p>10 you would review the book to ensure that it didn't</p> <p>11 contain classified or sensitive information?</p> <p>12 A No. I think the Engagement Letter says that I would</p> <p>13 review it to ensure his compliance with his</p> <p>14 obligations under the agreement that he might have</p> <p>15 signed with the US Government concerning classified or</p> <p>16 classifiable information.</p> <p>17 Q And did you perform that task to the best of your</p> <p>18 ability?</p> <p>19 A I believe that I did.</p> <p>20 Q And as you sit here today, do you believe that you</p> <p>21 failed to find anything in the book that should have</p> <p>22 been removed to ensure his compliance with agreements</p> <p>23 he signed?</p> <p>24 MR. FURMAN: Could I have that last question read</p> <p>25 back? I'm not sure I understood it.</p>	<p style="text-align: right;">17</p> <p>1 footnote as much as possible the factual assertions</p> <p>2 that he was making by citing public source</p> <p>3 information, and I went so far as to research that and</p> <p>4 provide that information, and there were some things</p> <p>5 that I just couldn't find in the public domain. I</p> <p>6 recall that the co-writer, Kevin Maurer, also he</p> <p>7 agreed and found other foot -- other information to</p> <p>8 footnote that I couldn't find. But that was flatly</p> <p>9 rejected by the publisher. Initially they wanted to</p> <p>10 just make those endnotes instead of footnotes, and</p> <p>11 then they decided further to just make it a list of</p> <p>12 references cited in the book.</p> <p>13 So to answer your question, I had concerns that</p> <p>14 there was information in the book that could be</p> <p>15 construed by the Government to be sensitive, if not</p> <p>16 classified. At whatever level, I don't know.</p> <p>17 Q Is it your belief that if the footnotes had been</p> <p>18 added, the Government would not have had those</p> <p>19 concerns?</p> <p>20 A I can't tell, and I have no way of knowing that; but</p> <p>21 based on my experience, it was something that assists</p> <p>22 the author in getting the book past review when you</p> <p>23 can cite a legitimate public source as the source of</p> <p>24 the information.</p> <p>25 Q But at the time you were making these changes, you</p>
<p style="text-align: right;">16</p> <p>1 (Court Reporter read back.)</p> <p>2 A Well, here's the point. In the Government's review</p> <p>3 process, they could review it, and they don't care if</p> <p>4 it's already in the public domain. If you're writing</p> <p>5 a book about information the Government is concerned</p> <p>6 about, they don't want you to confirm what may be in</p> <p>7 the public domain. But some things, such as what your</p> <p>8 client testified to yesterday even, the terminology</p> <p>9 "SEAL Team 6" is supposed to be sensitive, and yet</p> <p>10 it's so saturated the public domain that it is common</p> <p>11 parlance.</p> <p>12 So, I can't really answer your question without</p> <p>13 that footnote that whereas I believe that anything</p> <p>14 that's in the book is either not classified or has</p> <p>15 been so saturated in the public domain that it is no</p> <p>16 longer a -- I wouldn't say a threat, but it is of no</p> <p>17 longer of any concern to the Government about the</p> <p>18 topic.</p> <p>19 Q Okay. Did you ever tell Mr. Bissonnette, after you</p> <p>20 had completed your review, that there might still be</p> <p>21 this information in there that is already in the</p> <p>22 public domain and should not be a concern but the</p> <p>23 Government might still get upset over it?</p> <p>24 A Yeah. There were quite a few issues. I suggested to</p> <p>25 him, his literary agent, and the publisher that they</p>	<p style="text-align: right;">18</p> <p>1 already knew this book was not going to be reviewed,</p> <p>2 correct?</p> <p>3 A I would not say that I knew it was not going to be</p> <p>4 reviewed, because I had initial conversation with Matt</p> <p>5 about getting the book reviewed, and I told him my</p> <p>6 experiences with getting the book reviewed. I told</p> <p>7 him that the time for review could be anywhere from</p> <p>8 two weeks to two years or never come. I also told him</p> <p>9 that the book may be reviewed and come back as, "Do</p> <p>10 not publish." It could come back as "You must revise</p> <p>11 it." It could come back as "You must redact these</p> <p>12 things." And then your publisher has the opportunity</p> <p>13 to decide with you, as the author, whether to publish</p> <p>14 the redacted, blacked-out words and paragraphs or</p> <p>15 to -- and then put in a summary, a non-classified</p> <p>16 summary of what those redacted notes were about, or to</p> <p>17 rewrite the book so that it contained no redactions.</p> <p>18 And once I explained this to your client, he was</p> <p>19 adamant that he did not want to submit the book for</p> <p>20 review if it was going to take longer than he had been</p> <p>21 given by the publisher to get the book to them in</p> <p>22 publishable format. He said that --</p> <p>23 Q Let me stop you just for a second, because we want to</p> <p>24 put this in context.</p> <p>25 A Sure.</p>

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<p style="text-align: right;">19</p> <p>1 MR. FURMAN: Did you finish your answer to the</p> <p>2 question?</p> <p>3 THE WITNESS: No, I didn't but --</p> <p>4 MR. FURMAN: Well, I think my client would like</p> <p>5 to finish his answer, if it's possible.</p> <p>6 MR. JOHNSTON: And he will be allowed to.</p> <p>7 Q But my question is, are you talking about a January 25</p> <p>8 telephone call when you had this discussion?</p> <p>9 A There were a couple of different discussions. One was</p> <p>10 January 25, and then there was another once he got the</p> <p>11 manuscript to me.</p> <p>12 The last thing I was going to say was that he</p> <p>13 wanted -- what he told me was that the book -- he had</p> <p>14 to meet the deadline. They had already given him an</p> <p>15 advance, and this was -- I think this was probably</p> <p>16 close to June when I first -- when I got the</p> <p>17 manuscript, this conversation, and that there was no</p> <p>18 way they could submit the book at that time because</p> <p>19 they needed to get the book published before the</p> <p>20 competition; and the competition, according to him,</p> <p>21 from what I recall, was that he referenced "Zero Dark</p> <p>22 30". The movie was to come out, and I believe at that</p> <p>23 time he also mentioned that there were other members</p> <p>24 in the Command who were writing books, higher-ranking</p> <p>25 officers.</p>	<p style="text-align: right;">21</p> <p>1 exactly how long.</p> <p>2 Q Did you bill for that call?</p> <p>3 A I don't know if I did or not.</p> <p>4 Q If that phone call is not in your bill for June, would</p> <p>5 that indicate to you that that call did not take place</p> <p>6 in June?</p> <p>7 A Not at all. I often times wouldn't bill a client for</p> <p>8 telephone conversations. If it was a matter that was</p> <p>9 necessary because the client made -- gave me direction</p> <p>10 about something, then I would memorialize it and send</p> <p>11 him a letter saying, "Hey, this is what we talked</p> <p>12 about."</p> <p>13 But that was not the relationship I had with</p> <p>14 Matt. When Matt first came to me, he was very, very</p> <p>15 concerned about security. He and his literary agent,</p> <p>16 Elyse Cheney, were hyper-concerned about keeping his</p> <p>17 name out of the public view, security for his family</p> <p>18 and himself.</p> <p>19 Q Well, you weren't hesitant about emailing him or</p> <p>20 Ms. Cheney in connection with the discharge of your</p> <p>21 services, were you?</p> <p>22 MR. FURMAN: Objection to the form of the</p> <p>23 question.</p> <p>24 MR. JOHNSTON: What's the objection?</p> <p>25 MR. FURMAN: Well, you're assuming that there was</p>
<p style="text-align: right;">20</p> <p>1 Q And that conversation took place in June, as you</p> <p>2 recall?</p> <p>3 A I believe it was in June when I got the manuscript.</p> <p>4 Q I don't see a reference to that conversation in the</p> <p>5 Answers to Interrogatories that you swore to. Is</p> <p>6 there a reason why it isn't in there?</p> <p>7 A It must have slipped my mind. I think I did recall in</p> <p>8 the Interrogatories -- I talked about some phone calls</p> <p>9 in February, but, yeah, there was definitely a phone</p> <p>10 call in June -- at least one phone call, if not more.</p> <p>11 I think there were more than one in June.</p> <p>12 One of the phone calls was with Matt Bissonnette</p> <p>13 and also Kevin Maurer when we were talking about the</p> <p>14 footnoted issues. But the conversation with regard to</p> <p>15 submitting the book, again, was just Matt and I. He</p> <p>16 called me, and he was getting cold feet about</p> <p>17 submitting the book -- about publishing the book</p> <p>18 without it being submitted.</p> <p>19 Q Is that phone call reflected -- was that a long phone</p> <p>20 call?</p> <p>21 A As I sit here today, I don't recall. 15 minutes</p> <p>22 maybe.</p> <p>23 Q So all of that was discussed, you believe, in</p> <p>24 something approaching a 15-minute phone call?</p> <p>25 A 15, 20 minutes, something like that. I don't recall</p>	<p style="text-align: right;">22</p> <p>1 any hesitancy. That's -- I'm objecting to the form of</p> <p>2 the question.</p> <p>3 He can answer.</p> <p>4 Q You may answer.</p> <p>5 A I'm sorry. Could you repeat the question?</p> <p>6 Can you read it back?</p> <p>7 MR. FURMAN: Also lacks foundation.</p> <p>8 The client can answer the question.</p> <p>9 (Court Reporter read back.)</p> <p>10 A I think that my email with him was respectful of the</p> <p>11 anonymity that he wanted to convey. Also, we didn't</p> <p>12 discuss the materials that he was going to include in</p> <p>13 the book in any emails or billing. So I don't think I</p> <p>14 would call it hesitancy, but I think I would call it</p> <p>15 respecting what his wishes were.</p> <p>16 Q It is a true statement, is it not, that you routinely</p> <p>17 emailed Ms. Cheney about the discharge of your</p> <p>18 services in accordance with your Engagement Letter?</p> <p>19 A Yeah, I think you need to explain to me what you mean</p> <p>20 by the discharge of my services, because we emailed</p> <p>21 about the contract, we emailed about -- when the</p> <p>22 manuscript was going to get to me and how long I would</p> <p>23 have to review it. So I don't know specifically what</p> <p>24 you mean.</p> <p>25 Q Well, let me ask you to look there at Exhibit 33, the</p>

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<p style="text-align: right;">23</p> <p>1 Engagement Letter.</p> <p>2 A Okay.</p> <p>3 Q And I'll use the language of your Engagement Letter.</p> <p>4 You emailed Ms. Cheney about you assisting</p> <p>5 Mr. Bissonnette with legal issues that he might</p> <p>6 encounter in contracting with Dutton, correct?</p> <p>7 A Correct.</p> <p>8 Q And you emailed him in connection with reviewing the</p> <p>9 publishable manuscript of his career to ensure his</p> <p>10 compliance with his obligations under any agreements</p> <p>11 he may have signed with the US Government not to</p> <p>12 release classified or classifiable information or</p> <p>13 otherwise compromise the national security interests</p> <p>14 of the United States, correct?</p> <p>15 A That's correct.</p> <p>16 Q And yet -- and you tell me if I am incorrect. In my</p> <p>17 review of the file, I have found no email or letter</p> <p>18 that references the discussion you say you had with</p> <p>19 Mr. Bissonnette in June. Is there such a document</p> <p>20 that I haven't seen?</p> <p>21 A I don't know.</p> <p>22 Q And it's not in your Interrogatory Answers, correct?</p> <p>23 A I believe that's correct.</p> <p>24 Q And it's not referenced in your bills to</p> <p>25 Mr. Bissonnette?</p>	<p style="text-align: right;">25</p> <p>1 that request?</p> <p>2 A I do not know.</p> <p>3 Q There was a second request and then a second</p> <p>4 production by Mr. Shannon. Did you have any role in</p> <p>5 that?</p> <p>6 A No, I don't think that I did. What I recall is that</p> <p>7 the information -- I gave Mr. Shannon what I had, and</p> <p>8 he was dealing directly with Carson Boxberger for</p> <p>9 their digital information. I know at some point that</p> <p>10 Carson Boxberger had a senior attorney assigned to</p> <p>11 oversee the production of the digital information to</p> <p>12 make sure that everything was produced. There was a</p> <p>13 list of -- and they asked me to review it, and I</p> <p>14 did -- a list of search terms that they used, which</p> <p>15 was very comprehensive, and then they -- that attorney</p> <p>16 did some kind of certification of his search and</p> <p>17 submitted that.</p> <p>18 Q Was that at the first request or the second request,</p> <p>19 or do you know?</p> <p>20 A I don't know, but I believe it was the second request.</p> <p>21 Q Okay. Do you know why that wasn't done in response to</p> <p>22 the first request?</p> <p>23 A I don't know. What I think was happening was that</p> <p>24 Mr. Shannon had reached out to the Department of</p> <p>25 Justice, and they said -- I think it had something to</p>
<p style="text-align: right;">24</p> <p>1 A I have not looked through all of my bills, but I'll --</p> <p>2 if that's what you're representing, then I guess that</p> <p>3 must be true.</p> <p>4 Q Let me ask you to -- well, let me move to another</p> <p>5 subject here for a minute here, and we may be able to</p> <p>6 discharge this quickly. We'll see.</p> <p>7 Did you have any role in connection with my</p> <p>8 request on behalf of Mr. Bissonnette for the</p> <p>9 production of his attorney-client file?</p> <p>10 A I did. I had the hard paper file, which did not have</p> <p>11 that many documents in it, and I produced immediately</p> <p>12 the paper file that I had, to then-attorney Robert</p> <p>13 Shannon.</p> <p>14 Q Let me ask you, how long was it before you produced</p> <p>15 the file to Mr. Shannon that you had?</p> <p>16 A Within 24 hours.</p> <p>17 Q Okay. And I gather by your comments that you did not</p> <p>18 have the digital file?</p> <p>19 A No.</p> <p>20 Q Okay. And that remained at Carson Boxberger?</p> <p>21 A Correct.</p> <p>22 Q Did Carson Boxberger also have a hard copy file, to</p> <p>23 your knowledge?</p> <p>24 A I do not believe they did.</p> <p>25 Q Do you know when the file was produced to me after</p>	<p style="text-align: right;">26</p> <p>1 do with copies of the manuscript that they said were</p> <p>2 not -- you know, they believed them to be classified</p> <p>3 and no one is to read them and words to that effect.</p> <p>4 I'm just trying to recall what Mr. Shannon said to me.</p> <p>5 But I think that was the only issue, really, was the</p> <p>6 copies of the manuscript.</p> <p>7 But then I know that the attorney from Carson</p> <p>8 Boxberger was directly told by the Department of</p> <p>9 Justice's Assistant US Attorney, Mr. Peak, that they</p> <p>10 were to produce everything to them immediately, and</p> <p>11 that's what they did.</p> <p>12 Q They were to produce everything to --</p> <p>13 A -- the Department of Justice.</p> <p>14 Q Okay. So is it your understanding that Carson</p> <p>15 Boxberger produced the entire file to the Department</p> <p>16 of Justice before it was produced to me, or as a part</p> <p>17 of the production to me?</p> <p>18 A I don't know the answer to that question. That's --</p> <p>19 Mr. Shannon would have to answer that question. I</p> <p>20 believe that Carson Boxberger gave everything that</p> <p>21 they had to Mr. Shannon, as I did, and then they went</p> <p>22 back and they searched again for the Department of</p> <p>23 Justice, per their directive, per their subpoena, and</p> <p>24 produced everything they had again.</p> <p>25 So I was really not involved directly, and I</p>

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<p style="text-align: right;">27</p> <p>1 don't think Carson Boxberger was involved directly</p> <p>2 with producing to your firm the documents, but my</p> <p>3 understanding is on both occasions they produced</p> <p>4 everything that they had; first to Mr. Shannon, and</p> <p>5 then Mr. Shannon withdrew, and then it was produced</p> <p>6 directly to the Department of Justice, if memory</p> <p>7 serves me correctly.</p> <p>8 Q Is it your -- first off, let me have the name of the</p> <p>9 attorney who certified it, certified the search</p> <p>10 results.</p> <p>11 A Calvert Miller.</p> <p>12 Q First name is spelled --</p> <p>13 A -- Calvert, C-a-l-v-e-r-t, Miller. He's a partner</p> <p>14 there.</p> <p>15 Q Thank you, sir. Is it your testimony that Carson</p> <p>16 Boxberger received a subpoena from the Department of</p> <p>17 Justice for the file at or about the same time I</p> <p>18 requested it?</p> <p>19 A I don't know the answer to that question.</p> <p>20 Q So you don't know the chronology of those events?</p> <p>21 A I do not.</p> <p>22 Q All right. There -- I understand that if I ask you</p> <p>23 questions about what you told the Department of</p> <p>24 Justice -- let me ask this.</p> <p>25 How many times were you interviewed by the</p>	<p style="text-align: right;">29</p> <p>1 Q Let me continue. I'll take this --</p> <p>2 A You asked me the question, so I'm trying to answer.</p> <p>3 Q You understand that the Court has ordered you to tell</p> <p>4 me what you told them, number one, correct?</p> <p>5 A Yes.</p> <p>6 Q And you have filed a Motion for Reconsideration, which</p> <p>7 is still pending?</p> <p>8 A That's correct.</p> <p>9 Q And if I ask you what you told them, you're going to</p> <p>10 stand on the Motion for Reconsideration and wait for</p> <p>11 the Judge's ruling?</p> <p>12 A Yes, sir.</p> <p>13 Q Okay. And if I ask you what documents you gave them,</p> <p>14 would you likewise not tell me and stand on the Motion</p> <p>15 for Reconsideration?</p> <p>16 MR. FURMAN: I think we -- Mr. Podlaski already</p> <p>17 testified his understanding is that the firm produced</p> <p>18 the entire file to the Government. I don't know that</p> <p>19 that's -- there's anything more beyond that.</p> <p>20 MR. JOHNSTON: Right now I'm speaking only about</p> <p>21 him, not the firm.</p> <p>22 MR. FURMAN: All right. That's fair.</p> <p>23 Q Let me ask you this. Did you individually, at your</p> <p>24 meeting or via some other transmission, give documents</p> <p>25 to the Department of Justice?</p>
<p style="text-align: right;">28</p> <p>1 Department of Justice in connection with</p> <p>2 Mr. Bissonnette?</p> <p>3 A Once in person and once on the phone.</p> <p>4 Q Okay.</p> <p>5 A And in that order.</p> <p>6 Q Okay. And on the occasion you were interviewed in</p> <p>7 person, you were represented by counsel at the</p> <p>8 meeting?</p> <p>9 A Correct.</p> <p>10 Q And that counsel was who?</p> <p>11 A Jim Lassart.</p> <p>12 Q And when the telephone conversation took place, was</p> <p>13 Mr. Lassart on the phone with you?</p> <p>14 A Yes.</p> <p>15 Q Okay. Can you tell me how long after the in-person</p> <p>16 meeting the phone call was?</p> <p>17 A I think the in-person was in December of 2015 -- no,</p> <p>18 '14, I think, and the phone call was six, seven months</p> <p>19 later.</p> <p>20 Q Okay.</p> <p>21 A Maybe less.</p> <p>22 Q And I understand if I ask you -- you're aware that the</p> <p>23 Court has ordered you to tell me what you told them,</p> <p>24 correct?</p> <p>25 A I understand that, but we have requested relief --</p>	<p style="text-align: right;">30</p> <p>1 A They received -- the documents that I had in the hard</p> <p>2 file we put on pdf and those were given to</p> <p>3 Mr. Shannon. Those same documents were given to the</p> <p>4 Department of Justice, no more, no less.</p> <p>5 Q By Mr. Shannon?</p> <p>6 A Which?</p> <p>7 Q I'm sorry. That's fair confusion. I apologize.</p> <p>8 When you say those documents that you had in a</p> <p>9 hard copy were given to Mr. Shannon --</p> <p>10 A -- in pdf form.</p> <p>11 Q -- in pdf form, is it your testimony that Mr. Shannon</p> <p>12 then gave them to the Department of Justice?</p> <p>13 A I don't know.</p> <p>14 Q You just know that the Department of Justice got them</p> <p>15 somehow?</p> <p>16 A No, I know that the Department of Justice asked me for</p> <p>17 them specifically. They wanted a copy of my hard</p> <p>18 file, and I sent them the same pdf, because it was</p> <p>19 a --</p> <p>20 Q Okay.</p> <p>21 A Let me finish, please. Because it was a complete pdf</p> <p>22 of the hard copies that I had, and I sent it to them.</p> <p>23 I also had to fill out an affidavit saying that I</p> <p>24 gave them everything I had.</p> <p>25 Q All right. Now I think I understand. So you gave</p>

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<p style="text-align: right;">31</p> <p>1 your more limited, small file to Mr. Shannon</p> <p>2 immediately after my request?</p> <p>3 A Yes, sir.</p> <p>4 Q And sometime thereafter, you likewise gave that same</p> <p>5 file to the Department of Justice?</p> <p>6 A Right. And I did it through -- I say I directly gave</p> <p>7 it to them. Well, I did it with my attorney, Jim</p> <p>8 Lassart.</p> <p>9 Q Okay. Do you recall whether you delivered that at</p> <p>10 your meeting or whether it was sent in advance of your</p> <p>11 meeting?</p> <p>12 A It was sent in advance.</p> <p>13 Q All right. And you still have a record of whatever</p> <p>14 you sent, I assume.</p> <p>15 A I have the pdf and the hard copy, yes.</p> <p>16 Q Okay. If -- well, do you know from your personal</p> <p>17 experience what Carson Boxberger gave the Department</p> <p>18 of Justice, separate and apart from your file? Just</p> <p>19 yes or no?</p> <p>20 A Well, I can't answer that.</p> <p>21 Q Okay.</p> <p>22 A I know that they gave them documents. I believe they</p> <p>23 gave me a CD of the -- a CD copy of what they gave,</p> <p>24 but I don't know all the documents that are in there.</p> <p>25 Q Okay. Do you know whether Carson Boxberger gave the</p>	<p style="text-align: right;">33</p> <p>1 A This last page appears to be not connected to --</p> <p>2 KP02192 doesn't appear to be connected.</p> <p>3 Q I don't even have that page. May I see what you have</p> <p>4 sir?</p> <p>5 A Sure.</p> <p>6 Q We may have stapled a page that doesn't belong on the</p> <p>7 document.</p> <p>8 (Pause)</p> <p>9 Q No, you are correct. That one doesn't belong there.</p> <p>10 That's a different document.</p> <p>11 MR. FURMAN: So we are taking out the one ending</p> <p>12 in 92?</p> <p>13 MR. JOHNSTON: Yes, sir.</p> <p>14 Q So do you now have a three-page document?</p> <p>15 A I do.</p> <p>16 Q And the first page says "MEMORANDUM FOR RECORD" and it</p> <p>17 has Paragraphs 1 through 8?</p> <p>18 A Right.</p> <p>19 Q With a Bates number of 116 at the bottom?</p> <p>20 A Correct.</p> <p>21 Q And then second page is Bates numbered 117 and has</p> <p>22 Paragraphs 9 and 10?</p> <p>23 A Correct.</p> <p>24 Q And then page 3 has Bates number 340 on it.</p> <p>25 A Correct.</p>
<p style="text-align: right;">32</p> <p>1 Department of Justice any documents that it did not</p> <p>2 produce through Mr. Shamon to me?</p> <p>3 A I do not know to certainty, but from my conversations</p> <p>4 with both Attorney Miller and Attorney Pape, I believe</p> <p>5 that they gave the same documents but with the caveat</p> <p>6 that there was a search done by Calvert Miller with</p> <p>7 search terms that were very broad in the second</p> <p>8 production. So --</p> <p>9 Q Do you know how many productions Carson Boxberger gave</p> <p>10 to the Department of Justice?</p> <p>11 A I believe just one.</p> <p>12 Q Okay. Let me ask you to look at a document.</p> <p>13 (Exhibit 35</p> <p>14 marked for identification.)</p> <p>15 Q Let me ask you to look at a document marked 35 that at</p> <p>16 the top is entitled in all capital letters "MEMORANDUM</p> <p>17 FOR RECORD". Are you the author of this document?</p> <p>18 A Just one moment.</p> <p>19 Q Certainly.</p> <p>20 (Pause)</p> <p>21 A Yes, it appears to be the memorandum that I prepared.</p> <p>22 Q Now, I didn't bring it, but I will tell you I have</p> <p>23 more than one version of this document where dates</p> <p>24 changed. Do I have both copies there? Oh, yes,</p> <p>25 there's at least a second page 1 attached.</p>	<p style="text-align: right;">34</p> <p>1 Q And let me just ask you to compare the third page and</p> <p>2 the first page, because they are not identical with</p> <p>3 regard to dates. Do you know why there would be two</p> <p>4 versions of this memorandum with the different dates?</p> <p>5 A Yeah. I think, first off, I created one of them and</p> <p>6 then I couldn't find it, and then created the other</p> <p>7 one. So -- but why there would be different dates?</p> <p>8 One of them I wrote earlier, like in the spring of</p> <p>9 2012; and then the other one I wrote later, I think in</p> <p>10 July of 2012, July or August.</p> <p>11 Q Which one did you write in the spring of 2012?</p> <p>12 A I think the 340.</p> <p>13 Q Okay. And is it your belief that the 340 document</p> <p>14 ends with Paragraph 8?</p> <p>15 A I don't recall.</p> <p>16 Q Because I -- if you look at the last sentence, I think</p> <p>17 I may have left off a second page of it.</p> <p>18 A Yeah, I don't recall.</p> <p>19 Q Okay.</p> <p>20 A You're right. It seems like there's more.</p> <p>21 Q And if there is more to the document numbered 348</p> <p>22 (sic) that matches the second page --</p> <p>23 MR. FURMAN: You mean 340.</p> <p>24 Q Yes, sir. Thank you for that correction. If there is</p> <p>25 more to 348 (sic) that matches in substance what is</p>

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<p style="text-align: right;">35</p> <p>1 numbered 117, would you agree with me that you did not 2 draft 340 in the spring of 2012, because it references 3 events occurring in June? 4 A Yeah, that's a fair estimation. Yeah, also if you 5 look at 340, it's internally inconsistent. So I think 6 I roughed one of these out, because it says "February" 7 in Paragraph 1, and in Paragraph 2 it says "January". 8 But in any event -- 9 MR. FURMAN: I just want to make sure I heard it 10 and the record is clear. You say "roughed it out"? 11 A Yeah. I mean, I just -- I think it was this 340 that 12 I kind of threw together based on -- I have a pad next 13 to my phone and I scribble down things, and then I 14 would, you know, typed it up and threw the notes away. 15 But I don't recall. 16 Q Can we agree then that with regard to the documents, 17 they were done after June of 2012? 18 A I wouldn't agree that both of them were done after 19 June of 2012. I don't know. I don't recall. 20 Q Okay. Why did you do this memorandum? 21 A Just my habit of recording issues or recording events 22 either for my memory or for -- just because -- I think 23 in this case it was because Mark -- or Matt -- had 24 said from the very beginning how he wanted to maintain 25 anonymity, and I didn't include things in billing</p>	<p style="text-align: right;">37</p> <p>1 (Exhibit 36 2 marked for identification.) 3 Q Let me just ask you to look in the chain there. 4 There's -- the second email down on page 1 is an email 5 from you to Elyse Cheney, correct? 6 A Okay. Where are you referring to? At the top? 7 Q Right here, sir (indicating). 8 A Okay. All right. 9 Q Dated January 17; do you see that? 10 A Yeah. 11 Q The final sentence there is, "Did Mark sign an 12 Engagement Letter with Rich's firm?" 13 Does that refresh your memory as to whether you 14 knew Rich Heller was representing him? 15 A No. Can I please read this? Because I don't recall 16 this document. 17 (Pause) 18 A This 2417 doesn't appear to be a complete document, 19 because it just -- she's referring to, "How should we 20 sign this?" 21 I don't know what this is referencing, because it 22 doesn't provide any background. 23 Q Well, isn't the subject of Ms. Cheney's email to you 24 "Retainer Agreement"? 25 A That's true.</p>
<p style="text-align: right;">36</p> <p>1 statements because of that. So I wanted to just have 2 an internal record. 3 Q Did you -- is it possible that you did this after Jeh 4 Johnson's letter? 5 A I don't recall that. So no, I don't think it was. I 6 think it was in July or early August. 7 I don't know as I sit here, but I don't believe 8 so. 9 Q During 2012, you knew Mr. Bissonnette had attorneys 10 representing him other than you, correct? 11 A When? 12 Q From the moment you first began representing him. 13 A No, I didn't know he had any other attorneys 14 representing him on anything until August 30th when 15 Robert Luskin called me up and said that he was 16 recently hired by Matthew Bissonnette and that I was 17 to have no further communication with his client 18 except if he was present. 19 Q So you didn't know he was represented by Mr. Heller? 20 A No idea. 21 Q So when there are emails -- if there are emails from 22 you confirming Mr. Heller's representation, you 23 wouldn't be able to explain that today? 24 A I don't recall that. 25 Q Let me show you what we'll mark as Exhibit 36.</p>	<p style="text-align: right;">38</p> <p>1 Q And then it says, "How should we sign this? Mark's 2 wife could sign it or else I could." 3 A That's true, but it doesn't necessarily answer the 4 whether or not there's -- there were other 5 information -- there were other emails exchanged on 6 this topic. 7 Q I'm sure there were others, but then you replied to 8 that moments later and said, "Can't have his wife or 9 you sign." And then you cite Rules of Professional 10 Responsibility, correct? 11 A Nonetheless -- yes, that's correct. But nonetheless, 12 it doesn't mean that there wasn't previous emails 13 exchanged on the topic. 14 Q And then there's an email from Elyse back to you, same 15 date. "I was thinking if I signed it I could be the 16 client, but I guess that would mean you couldn't set 17 up two LLC's." 18 And then you reply to that as well. 19 A Okay. I still haven't finished reviewing it, and you 20 asked me a question; so if I could finish reviewing 21 it, then I'll be able to answer your question. 22 (Pause) 23 A Okay. Having read this document, in answer to your 24 previous question, I believe that at the time, I was 25 aware that he had -- according to what Elyse Cheney</p>

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<p style="text-align: right;">39</p> <p>1 said, he, being Matt Bissonnette, had an Engagement</p> <p>2 Letter with Mr. Heller for -- as an entertainment</p> <p>3 lawyer, but I didn't have any other interface with him</p> <p>4 that I know of.</p> <p>5 Q And my question was, so in 2012 from the moment you</p> <p>6 began representing him, you knew he had other lawyers</p> <p>7 representing him also, correct?</p> <p>8 A I knew apparently that he had signed an Engagement</p> <p>9 Letter with Richard Heller.</p> <p>10 Q And is it your testimony here today that that's all</p> <p>11 you knew about Mr. Heller?</p> <p>12 A As far as I recall, yes; and then in August 30th, I</p> <p>13 knew that he had retained Mr. Lusk.</p> <p>14 Q Did you have any communications with Mr. Heller?</p> <p>15 A Not that I recall. I'm sorry to interrupt you.</p> <p>16 Q That's all right.</p> <p>17 When do you contend that your representation of</p> <p>18 Mr. Bissonnette ended?</p> <p>19 A When Mr. Lusk said, "Don't have any further contact</p> <p>20 with my client without my being present."</p> <p>21 Q And when was that?</p> <p>22 A I believe it was on or before August 30th, 2012.</p> <p>23 Q Do you know from the documents we've produced when</p> <p>24 Mr. Lusk was retained?</p> <p>25 A No, I do not.</p>	<p style="text-align: right;">41</p> <p>1 THE WITNESS: I'm sorry, go ahead.</p> <p>2 MR. FURMAN: There were two questions, and I</p> <p>3 wasn't sure which one you want my client to answer.</p> <p>4 Q The question is is there some reason you are</p> <p>5 highlighting the fact that the discussions were email</p> <p>6 discussions?</p> <p>7 A No, just other than the fact that they were group</p> <p>8 exchanges.</p> <p>9 Q Okay. So is it your testimony then that the only</p> <p>10 contact you would have had with Mr. Bissonnette after</p> <p>11 the telephone call with Mr. Lusk was either group</p> <p>12 email exchanges or matters unrelated to the book?</p> <p>13 A I believe that to be true, yes.</p> <p>14 Q In the group email exchanges, was Mr. Lusk involved?</p> <p>15 A I don't recall if on every email exchange he was, but</p> <p>16 I believe that he was.</p> <p>17 Q Did he ever in -- did he ever complain to you about</p> <p>18 the fact that you were continuing to have contact with</p> <p>19 Mr. Bissonnette contrary to his directions to you of</p> <p>20 August 30 or before?</p> <p>21 A No, because I didn't give him any reason to complain.</p> <p>22 Q Did you bill for any of your work after this phone</p> <p>23 call?</p> <p>24 A I don't recall as I sit here, but I suspect I did. I</p> <p>25 did some work at the direction of Mr. Lusk.</p>
<p style="text-align: right;">40</p> <p>1 Q Did you continue to have conversations with</p> <p>2 Mr. Bissonnette, notwithstanding these directions from</p> <p>3 Mr. Lusk?</p> <p>4 A I think the conversations might have been through</p> <p>5 email with other persons being present; and if they</p> <p>6 weren't, they were likely on matters that were not</p> <p>7 directly related to the issues concerning the book</p> <p>8 review by the Department of Defense.</p> <p>9 Q Mr. Podlaski, did you, after your conversation with</p> <p>10 Mr. Lusk, have discussions with Mr. Bissonnette</p> <p>11 about your -- the book and your representation of him?</p> <p>12 A I already answered your question.</p> <p>13 Q Is the answer then yes, you did?</p> <p>14 A No. You're mischaracterizing my answer. What I said</p> <p>15 was if I did, I had discussions with him through email</p> <p>16 channels or email exchanges, or they were matters that</p> <p>17 were not related directly to the DoD's issues with the</p> <p>18 book, that I recall.</p> <p>19 Q When you make a point of saying you had email</p> <p>20 discussions with him, are you suggesting that</p> <p>21 Mr. Lusk -- Mr. Lusk's directions to you permitted</p> <p>22 you to have email discussions or -- I'm not sure why</p> <p>23 you're saying "I had email discussions."</p> <p>24 A Well, it was group discussions.</p> <p>25 MR. FURMAN: Objection.</p>	<p style="text-align: right;">42</p> <p>1 Q Would that be an indication that your representation</p> <p>2 hadn't ended, if you continued to work and bill for</p> <p>3 your work at the request of Mr. Lusk?</p> <p>4 A I believe that I was assisting, but I was -- no longer</p> <p>5 had a direct one-on-one relationship with</p> <p>6 Mr. Bissonnette, and I was assisting Mr. Lusk in his</p> <p>7 primary representation of Mr. Bissonnette.</p> <p>8 Q And in what capacity were you assisting Mr. Lusk?</p> <p>9 A Well, I assisted Mr. Lusk with regard to matters</p> <p>10 concerning process and handling of classified</p> <p>11 information.</p> <p>12 Q As an attorney for Mr. Bissonnette?</p> <p>13 A Yeah. He was the only one who I had an Engagement</p> <p>14 Letter with.</p> <p>15 MR. FURMAN: Randy, could we take a very quick</p> <p>16 break?</p> <p>17 MR. JOHNSTON: Certainly.</p> <p>18 (Recess)</p> <p>19 BY MR. JOHNSTON:</p> <p>20 Q Mr. Podlaski, did you ever tell Mr. Bissonnette that</p> <p>21 you were not his attorney?</p> <p>22 A No, I don't believe so.</p> <p>23 Q Did you ever tell him that he could not or should not</p> <p>24 rely on your advice?</p> <p>25 A No, I did not.</p>

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<p style="text-align: right;">43</p> <p>1 Q Did you send Freedom of Information Act requests for</p> <p>2 Mr. Bissonnette in September and November of 2012?</p> <p>3 A I believe September. I don't recall sending any in</p> <p>4 November, but I believe it was September; yes, I did.</p> <p>5 Q And did you in May of 2013 report on the status of</p> <p>6 those requests to Mr. Bissonnette and to an individual</p> <p>7 employed in Elyse Cheney's office?</p> <p>8 A Well, I recall that an individual from Elyse Cheney's</p> <p>9 office called me up, which I thought very odd since I</p> <p>10 had not heard from anyone in months. I was believing</p> <p>11 our relationship had died on the vine. So believing</p> <p>12 that I may have still had an obligation to close the</p> <p>13 loop on that, I think I provided whatever the status</p> <p>14 was to Mr. Jacobs, I believe his name was.</p> <p>15 Q Yes, that's correct. In connection with that, did you</p> <p>16 also have a telephone or email exchange with</p> <p>17 Mr. Bissonnette personally about it?</p> <p>18 A You know, I don't recall.</p> <p>19 Q At any point in time, did you have any concern about</p> <p>20 communicating with Mr. Bissonnette because he was</p> <p>21 represented by other counsel on this matter?</p> <p>22 A Yeah, after August 30th, 2012, as I already said.</p> <p>23 Q So did you hesitate to communicate with him after that</p> <p>24 point in time?</p> <p>25 A I did not communicate with him directly, one-on-one</p>	<p style="text-align: right;">45</p> <p>1 A Well, Mr. Luskin asked me to do so as well, and if you</p> <p>2 look at the Engagement Letter, I was just -- as far as</p> <p>3 I was concerned, my obligations under the Engagement</p> <p>4 Letter had been met. And so I reviewed the</p> <p>5 publication, I helped with the contract. So at this</p> <p>6 point, I was rendering assistance, and Mr. Luskin</p> <p>7 asked me to do certain things, and I did them.</p> <p>8 Q And is that the reason you sent the Freedom of</p> <p>9 Information Act requests in November of 2012?</p> <p>10 A I'm not sure that I sent one in 2012, as I said</p> <p>11 previously.</p> <p>12 Q You did say that.</p> <p>13 A If I did, then yeah. I didn't do it out of any</p> <p>14 prurient interest.</p> <p>15 Q So if you did, you did it to benefit Mr. Bissonnette?</p> <p>16 A Indirectly you could say that, but I was assisting</p> <p>17 Mr. Luskin in -- by doing what he asked me to do.</p> <p>18 Q Whose idea was it to send Freedom of Information Act</p> <p>19 requests?</p> <p>20 A I think it was actually my idea when we had a group</p> <p>21 telephone call, either -- sometime early September.</p> <p>22 And someone had raised the question of why are they</p> <p>23 doing this, why are they singling us out, and in my</p> <p>24 experience, there were authors who had not submitted</p> <p>25 their books for review and there was not -- in other</p>
<p style="text-align: right;">44</p> <p>1 after that time, because I was told not to by</p> <p>2 Mr. Luskin, who clearly now was the primary counsel on</p> <p>3 handling matters related to the book. I had complied</p> <p>4 essentially with what I was required to do under the</p> <p>5 Engagement Letter and was, in my mind, being kept on</p> <p>6 to assist just because of the knowledge that I had and</p> <p>7 experience with regard to classified information</p> <p>8 processing.</p> <p>9 Q Did Mr. Bissonnette ever tell you that he was</p> <p>10 terminating the attorney-client relationship with you?</p> <p>11 A No, I don't believe he did.</p> <p>12 Q Did you ever tell him you were terminating the</p> <p>13 relationship with him?</p> <p>14 A No, I don't believe that I did.</p> <p>15 Q Would it be reasonable for Mr. Bissonnette to believe</p> <p>16 you continued to represent him in November of 2012 if</p> <p>17 in November of 2012 you, in fact, did send Freedom of</p> <p>18 Information Act requests on his behalf?</p> <p>19 MR. FURMAN: Objection.</p> <p>20 You can answer.</p> <p>21 A I would be speculating.</p> <p>22 Q Can you think of any reason you would have sent</p> <p>23 Freedom of Information Act requests related to other</p> <p>24 authors and their pre-publication review status, other</p> <p>25 than to be of assistance to Mr. Bissonnette?</p>	<p style="text-align: right;">46</p> <p>1 words, there was precedence for not submitting your</p> <p>2 book for review, and if you wanted to use that as part</p> <p>3 of your contention with the Government, that's what</p> <p>4 Mr. Luskin wanted to do.</p> <p>5 Q Did Mr. Luskin in this phone call on August 30 or</p> <p>6 before that you earlier referenced tell you that the</p> <p>7 attorney-client relationship with Mr. Bissonnette was</p> <p>8 being terminated?</p> <p>9 A I think he did in so many words, as I explained</p> <p>10 previously.</p> <p>11 Q I'm not interested for the moment in so many words.</p> <p>12 Did he say, in effect, "Your relationship" -- "Your</p> <p>13 attorney-client relationship with Mr. Bissonnette is</p> <p>14 hereby terminated"?</p> <p>15 A No, he didn't say those words, but that was the</p> <p>16 message I got.</p> <p>17 Q Did he say, "You are not to talk to Mr. Bissonnette"?</p> <p>18 A He said, "Don't talk to him unless I am present."</p> <p>19 Q Okay.</p> <p>20 A Meaning that he was involved in a telephone</p> <p>21 conversation. We had never had a face-to-face</p> <p>22 meeting, any of us, so I knew he couldn't be referring</p> <p>23 to that.</p> <p>24 Q Do you agree with me that it is entirely possible to</p> <p>25 have a continuing attorney-client relationship with</p>

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<p style="text-align: right;">47</p> <p>1 Mr. Bissonnette even though Mr. Luskin wants to be 2 present on every phone call you have with him? 3 MR. FURMAN: Objection. 4 A You're asking me to answer a hypothetical and 5 speculate. 6 Q Are you able to answer that question whether or not 7 it's possible to have -- for you to have an ongoing 8 attorney-client relationship with Mr. Bissonnette 9 notwithstanding Mr. Luskin's directions to you that he 10 wanted to be a part of any conversations you had with 11 him? 12 MR. FURMAN: Objection. 13 A You're still asking me to speculate. Based on what 14 Mr. Luskin told me, I believe that I was effectively 15 fired as Mr. Bissonnette's primary counsel and was 16 only being asked to assist Mr. Luskin in his 17 responding to Department of Defense. 18 Q But being fired as primary counsel is not the same as 19 being fired as counsel, is it? It's a demotion. 20 A If that's what you want to contend, fine, but that's 21 your opinion. 22 Q In connection with Mr. -- the billing of 23 Mr. Bissonnette, did you write off any time? 24 A I did. 25 Q Are there records at Carson Boxberger that would</p>	<p style="text-align: right;">49</p> <p>1 an AMA memo or entry "Against Medical Advice". They 2 tell the patient, "You need this surgery;" the patient 3 says, "I don't want it." "You need chemo;" "I'm not 4 going to take chemo." "You need to take a pill every 5 day;" "I'm not going to take a pill every day." And 6 they make an entry, "Patient is acting against medical 7 advice." 8 I'm asking kind of within that kind of concept in 9 a legal framework. Did Mr. Bissonnette ever act 10 against your legal advice? 11 MR. FURMAN: Objection. 12 A I would say no. What we did was he asked me for 13 advice on matters. I presented to him the options. I 14 presented to him the ramifications for each of the 15 courses of action, and he made a decision. 16 And specifically what I'm referring to is when we 17 first had a telephone conversation, he asked about 18 submitting -- whether the book had to be submitted and 19 the process involved with submitting, and I explained 20 that to him. And then we went over Standard Form 312 21 and my interpretation of that. In particular, 22 Paragraph 3 of it says if you're uncertain as to 23 whether or not your writing or public speech contains 24 classified information, then you should check with the 25 agency; as opposed to the DD Form 1847-1, which</p>
<p style="text-align: right;">48</p> <p>1 reflect time that was written off? 2 A I don't know. I know that I had submitted a bill to 3 Elyse Cheney, and then she nickel and dined it, and I 4 revised it, but I think that was only in the very 5 beginning. 6 Q Let me put that aside. I know what you're talking 7 about there. I'm talking about you unilaterally 8 recording time, and then at the time the bill is 9 prepared, deciding "I'm not going to bill that." 10 A Oh, I misunderstood your question. 11 Q That's my fault. 12 A No, I just didn't write down the time -- like 13 telephone calls and things of that nature I didn't 14 write down. Like I said, Mr. Bissonnette wanted to be 15 circumspect about things that were recorded and 16 written down, and I did not write down all of my time. 17 Q Did Mr. Bissonnette at any point act contrary to your 18 advice? 19 A What do you mean? 20 Q Have you ever handled any -- you may not have, 21 Mr. Podlaski -- any medical malpractice cases in your 22 professional career? 23 A No, I'm not a medical malpractice attorney. 24 Q Okay. Here's what I'm getting at, if you'll allow me 25 to explain it. Doctors routinely have what they call</p>	<p style="text-align: right;">50</p> <p>1 unequivocally requires one to submit the document to 2 review if it is in any way, shape, or form derived 3 from a Special Access Program. And I also explained 4 to him the ramifications of those decisions. 5 "You could do anything -- you could be subjected 6 to anything from forfeiture, to criminal prosecution, 7 and that could be under either of those forms." Never 8 represented to him that the Government had the same 9 position I did with regard to 312, although the 10 document speaks for itself about whether you have a 11 question or not. So it seems to be some discretion. 12 Mr. Bissonnette's concern was not going to jail. 13 That's what he constantly during our conversation -- I 14 don't mean constantly -- well, he said it a couple of 15 times. I don't want to be too hyperbolic on it, but 16 he said a couple times, "I just don't want to go to 17 jail here." So I had researched and reviewed through 18 ECF and -- the Electronic Filing System -- and also 19 researched some case law and found that the military 20 had not prosecuted anyone criminally for writing a 21 book that was marginally violative of the Classified 22 Information Non-disclosure Agreement, but certainly 23 had done many forfeitures. And Mr. Bissonnette's 24 response was didn't really care about the money, was 25 going to donate it to charity, he just didn't want to</p>

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<p style="text-align: right;">51</p> <p>1 go to jail.</p> <p>2 Q Object to everything after "I would say no" as</p> <p>3 nonresponsive.</p> <p>4 If he had acted contrary to your advice, would it</p> <p>5 have been your practice to have put something either</p> <p>6 in your file or sent him an indication to memorialize</p> <p>7 that?</p> <p>8 A You're asking me to speculate on something that didn't</p> <p>9 happen.</p> <p>10 Q Let me rephrase it then.</p> <p>11 Is it your practice as a lawyer to memorialize</p> <p>12 occasions when clients act contrary to your advice or</p> <p>13 not in their own best interests in your opinion?</p> <p>14 A It depends on whether it was a major decision or not.</p> <p>15 If it was a minor issue, I might make a</p> <p>16 memorandum for record for myself. If it was a major</p> <p>17 issue, it might be a client relationship ending issue,</p> <p>18 so I would terminate the relationship.</p> <p>19 And sometimes there's decisions that are neither</p> <p>20 severe nor minor, that it's entirely within the</p> <p>21 purview of the client to make a decision and the</p> <p>22 decision is theirs, and it's -- often times we'll call</p> <p>23 it a business decision about what they want to do.</p> <p>24 Q I find in your file no memo or letter or email or</p> <p>25 other communication to Mr. Bissonnette that outlines</p>	<p style="text-align: right;">53</p> <p>1 that or not is not something for this witness to</p> <p>2 answer. It's really subject to the Court's discretion</p> <p>3 if we make that application to do so. So I don't know</p> <p>4 that Mr. Podlaski would be in a position to comment on</p> <p>5 that. He's a party, a witness, and that decision,</p> <p>6 whether we contemplate it or not, is for the lawyers</p> <p>7 and ultimately for the Court's approval.</p> <p>8 MR. JOHNSTON: And if he's going to testify as an</p> <p>9 expert witness, then I'm permitted to ask about his</p> <p>10 qualifications, and I'm not -- I recognize he may not</p> <p>11 have his opinions formalized. If he anticipates</p> <p>12 testifying as an expert, I want to know it.</p> <p>13 MR. FURMAN: Under the Court's order as I</p> <p>14 understand it, the time to name experts hasn't --</p> <p>15 MR. JOHNSTON: The deadline has not passed.</p> <p>16 MR. FURMAN: -- has not passed.</p> <p>17 MR. JOHNSTON: But it's not a Court order that</p> <p>18 says you must disclose them no earlier than this date.</p> <p>19 You can disclose them later.</p> <p>20 My question is, sitting here today, does the</p> <p>21 witness have an expectation that he will testify as an</p> <p>22 expert?</p> <p>23 MR. FURMAN: I don't think we know one way or the</p> <p>24 other.</p> <p>25 MR. JOHNSTON: He has an expectation. You may</p>
<p style="text-align: right;">52</p> <p>1 the options and the risks associated with publishing</p> <p>2 the book without a Governmental review. Is there such</p> <p>3 a document in existence that I haven't seen?</p> <p>4 MR. FURMAN: Objection.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: No, no.</p> <p>7 MR. FURMAN: I just placed an objection, because</p> <p>8 I'm not sure that the way the question is posed, it's</p> <p>9 referring to Mr. Johnston's -- his -- I'm trying to</p> <p>10 find the right word -- representation of what's</p> <p>11 contained in the file.</p> <p>12 With that objection, you can answer.</p> <p>13 THE WITNESS: I'm really sorry. Can you repeat</p> <p>14 the question, after that long-winded objection?</p> <p>15 (Court Reporter read back.)</p> <p>16 A I don't believe so.</p> <p>17 Q Is it your expectation at the trial of this case to</p> <p>18 testify as an expert witness on anything?</p> <p>19 MR. FURMAN: Objection.</p> <p>20 A Not at the present time.</p> <p>21 Q Okay. And to be clear with you, do you anticipate</p> <p>22 testifying as to the standard of care for lawyers who</p> <p>23 represent authors with confidentiality obligations</p> <p>24 growing out of Government services of some type?</p> <p>25 MR. FURMAN: Objection. Whether we decide to do</p>	<p style="text-align: right;">54</p> <p>1 not, but he does.</p> <p>2 MR. FURMAN: I don't know his answer to that</p> <p>3 question, but --</p> <p>4 MR. JOHNSTON: We never will know it if you and I</p> <p>5 both don't stop talking.</p> <p>6 A Not at the present time.</p> <p>7 Q Do you agree with me that your duty as attorney for</p> <p>8 Mr. Bissonnette included the duty to advise him on</p> <p>9 whether he had a pre-publication review obligation?</p> <p>10 A Yes.</p> <p>11 Q Did you advise him that he had no such obligation?</p> <p>12 A I advised him that by explaining what the forms</p> <p>13 required, by explaining the type of information that</p> <p>14 he was exposed to. You sign a document -- normally,</p> <p>15 the correct way to do it, you sign a document that</p> <p>16 would be associated with the level of the information</p> <p>17 that's provided.</p> <p>18 So, if you're on a mission that is not a</p> <p>19 compartmented or Special Access Program, the Standard</p> <p>20 Form 312 that you sign when you come into Special</p> <p>21 Operations would cover that. And then the issue in</p> <p>22 Paragraph 3 is whether or not you have a question or</p> <p>23 you are uncertain as to whether information is</p> <p>24 classified or not.</p> <p>25 So, my answer is the documents and the</p>

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<p style="text-align: right;">55</p> <p>1 information that you are exposed to drive your 2 obligation. 3 Q So did you advise him he did have an obligation; did 4 you advise him he did not have an obligation; did you 5 advise him you didn't know if he did or did not? 6 A I advised him, as I just explained, about the 7 requirements and explained to him that Standard Form 8 312 appears to be discretionary in that it says if you 9 are uncertain that the information you're going to use 10 is classified. Mr. Bissonnette had no uncertainty, 11 and he also told me that he did not recall signing any 12 Special Access Program documents, and he did not 13 recall receiving a briefing telling him that the 14 information in connection with Operation Neptune Spear 15 was a Special Access or compartmented program. 16 So based upon that, the only document that he 17 recalled signing was Standard Form 312, and then it 18 was at his discretion and his decision as to whether 19 or not he had an obligation. 20 Q Did you recommend that he not submit the book to a 21 pre-publication review? 22 A I explained to you just now what our conversation 23 consisted of, and it was his decision to make. 24 Q Of course it's his decision. My question is did you 25 recommend that he not submit to a pre-publication</p>	<p style="text-align: right;">57</p> <p>1 in the middle of page 1 -- 2 A Um-hum. 3 Q -- of the document. And down in the last paragraph of 4 your email to Mr. Luskin on which you copied 5 Mr. Owen -- well, just read that paragraph for me, 6 please. 7 A This is the one that's dated September 20th, 2012? 8 Q Yes, sir. 9 A So this was after the book was written. 10 Q Yes, sir. And after Mr. Luskin's telephone call with 11 you that you discussed earlier. 12 A Right. And so you see this is to Mr. Luskin and copy 13 furnished to Mark Owen. 14 Q And read the last paragraph aloud, please. 15 A Okay. "Having been in Special Operations over 12 16 years, Mark was very confident that he was not going 17 to address or describe any classified or classifiable 18 information in the manuscript, and with my 19 recommendation, Mark decided not to send the 20 manuscript to USSOCOM or Office of Security Policy 21 Review, OSPR". 22 Q Does that refresh your recollection as to whether or 23 not you recommended he not send the manuscript for 24 review? 25 A There's a comma after the word "recommendation". My</p>
<p style="text-align: right;">56</p> <p>1 review? 2 A I don't think it was that simple. It was more of, 3 "The best thing to do is to submit the book and then 4 you have no worries," but he was driven by a timeline 5 and -- apparently imposed by his publisher, and so he 6 said that he could not submit the book -- and as a 7 matter of fact, I had even tried to revisit the issue 8 with him and his literary agent by proposing language 9 to change the contract with Dutton, and they both 10 struck that proposed paragraph and said they didn't 11 have time for the publisher -- excuse me -- they 12 didn't have time for the review of the publication. 13 So the recommendation I made was, "Submit the 14 book," and the decision was his to make. And then 15 once he made the decision, said that "It's a plausible 16 way to go based upon what you're telling me; that is, 17 that you only signed the 312, you didn't sign any 18 Special Access Program documents and you were not 19 exposed to any Special Access Programs." 20 (Exhibit 37 21 marked for identification.) 22 Q Let me show you what I have marked as Exhibit 37, 23 which appears to be an email exchange between you and 24 Mr. Luskin, and I am going to direct your attention 25 specifically to the email from you to Mr. Luskin here</p>	<p style="text-align: right;">58</p> <p>1 recommendation was as I explained it to you. I showed 2 him the options, explained to him what the 3 ramifications were of either submitting the book and 4 suffering either the delay, do not publish 5 recommendation for -- order from the Department of 6 Defense, or not submitting the book and the potential 7 consequences. 8 So, that is not necessarily, as you put it, my 9 recommendation was not to submit the book. Mark 10 decided not to submit the manuscript. My 11 recommendation was as I explained to you. I told him 12 what the options were, and it was his decision. 13 Q So is it your testimony today that when you wrote this 14 email to Mr. Luskin with a copy to your client, 15 Mr. Owen, and said, "With my recommendation, Mark 16 decided not to submit the manuscript," you did not 17 intend to say that his decision was consistent with 18 your recommendation? 19 A When I said "and with my recommendation," comma, "Mark 20 decided not to send the manuscript to USSOCOM or 21 OSPR." My recommendation was, as I said, an analysis 22 of what the ramifications were for not submitting it 23 and the potential penalties that he would suffer and, 24 as well, a decision by him about whether the book 25 contained classified information or not. I certainly</p>

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<p style="text-align: right;">59</p> <p>1 assisted him with helping to glean the book from</p> <p>2 classified information, but as I said, I don't know</p> <p>3 what I don't know, explained that to him, and told him</p> <p>4 it was his decision. And it was a business decision.</p> <p>5 Q So did you make -- and I understand you keep --</p> <p>6 respectfully, you keep wanting to tell me the basis of</p> <p>7 what you told him, the things he should consider. But</p> <p>8 then in the end, after considering all of that and</p> <p>9 after you analyzing it, did you make a recommendation,</p> <p>10 "I recommend you submit it," "I recommend you not</p> <p>11 submit it," or did you simply, in the alternative,</p> <p>12 download the information and leave it entirely up to</p> <p>13 him?</p> <p>14 A Based on what he told me, that he had only signed a</p> <p>15 special -- a Standard Form 312, that he was out of the</p> <p>16 Navy as of February 1st, that he had no further</p> <p>17 obligation to the military, that he was -- did not</p> <p>18 receive Special Access Program information on</p> <p>19 Operation Neptune Spear, that he did not sign any DD</p> <p>20 Form 1847-1, knowing what I knew, part of our -- and</p> <p>21 after reviewing with him the ramifications of the</p> <p>22 decisions -- the decision that was his to make, as I</p> <p>23 said, after he made the decision, I believe that to be</p> <p>24 a perfectly plausible decision, knowing what I knew at</p> <p>25 the time.</p>	<p style="text-align: right;">61</p> <p>1 publication industry, a galley copy is where it's a</p> <p>2 soft cover of the final draft that they send around to</p> <p>3 the copyright editor. They send it to anyone else who</p> <p>4 would have an interest in vetting the book. They went</p> <p>5 right to final form. So it went from his manuscript</p> <p>6 to final form. Why? Because they wanted to meet the</p> <p>7 deadline, and that seemed to be very driven by the</p> <p>8 publisher. The publisher was effectively -- what I</p> <p>9 was getting -- the sense I was getting from</p> <p>10 Bissonnette and Cheney was that the engine driving the</p> <p>11 train here was the publisher pushing for this thing to</p> <p>12 get done, and there was a looming threat of the</p> <p>13 advance money being forfeited if they didn't get it</p> <p>14 done on time.</p> <p>15 So that was the restraints he was operating</p> <p>16 under, and as I said, having reviewed with him the</p> <p>17 ramifications, as well as the potential penalties for</p> <p>18 not submitting the book, it was his decision to make.</p> <p>19 That was a monumental decision for him to make.</p> <p>20 Q Is your recommendation that he submit the book to a</p> <p>21 Governmental review to be safe documented anywhere?</p> <p>22 A Yeah, it's in that email that I sent to Ms. Cheney and</p> <p>23 to Bissonnette, advising them that the -- that they</p> <p>24 should include this or they should consider --</p> <p>25 reconsider submitting the book to Governmental review</p>
<p style="text-align: right;">60</p> <p>1 Q Are you able to tell me whether you recommended a</p> <p>2 review or recommended against a review to your client,</p> <p>3 who was relying on you to make this -- to help him</p> <p>4 make this decision?</p> <p>5 A Oh, I definitely --</p> <p>6 MR. FURMAN: Objection, just the last part of</p> <p>7 that question. You added the reference that the</p> <p>8 client was relying, and I think that that's the part</p> <p>9 of the question I'm objecting to.</p> <p>10 A As I said earlier, I told him and recommended the</p> <p>11 safest course is to submit the book. I even proposed</p> <p>12 language in the contract that would relieve him of the</p> <p>13 obligation to meet the publisher's timeline. This was</p> <p>14 a business decision that he made, that they wanted to</p> <p>15 get the book out, they had a short time to do it, they</p> <p>16 needed to beat the competition. Someone in his chain</p> <p>17 of Command was writing a book -- turned out to be</p> <p>18 Admiral Nick Raven and Mr. Bowden -- and also that</p> <p>19 they wanted to meet "Zero Dark 30".</p> <p>20 So yeah, I recommended that the book should be</p> <p>21 submitted. We revisited the issue in June when he</p> <p>22 gave me the manuscript.</p> <p>23 You know, here's the sense of urgency that was</p> <p>24 going on there. They did not do a galley copy, and a</p> <p>25 galley copy -- if you know anything about the</p>	<p style="text-align: right;">62</p> <p>1 and proposed a clause to be included, which they</p> <p>2 struck.</p> <p>3 Q And do you remember what the clause was that you</p> <p>4 recommended be included?</p> <p>5 A Yeah, that -- as I sit here, to the best of my</p> <p>6 recollection, it was that -- first off, that contract</p> <p>7 that the publisher has is hopelessly amended, edited.</p> <p>8 It looks like it was originally typed on a 1950 Smith</p> <p>9 Corona and constantly added to; so there are addendums</p> <p>10 and references and revisions to the thing, and it</p> <p>11 seems to be internally inconsistent.</p> <p>12 But to answer your question directly, I</p> <p>13 recommended that the clause read, submit the book to</p> <p>14 the Government relieving, Mr. Bissonnette of the</p> <p>15 obligation under whatever paragraph it was to have the</p> <p>16 manuscript produced by a certain date, because it</p> <p>17 would be effectively out of his hands once it's</p> <p>18 submitted for Government review.</p> <p>19 (Exhibit 38</p> <p>20 presented to the witness.)</p> <p>21 Q Mr. Podlaski, I've handed you what is marked as</p> <p>22 Exhibit 38, which appears to be an email from you to</p> <p>23 Elyse Cheney, dated January 19, 2012 at 4:25 p.m., and</p> <p>24 ask you if that is the Amendment you were talking</p> <p>25 about that you proposed to the contract that they</p>

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<p style="text-align: right;">63</p> <p>1 rejected.</p> <p>2 A Just one moment.</p> <p>3 (Pause)</p> <p>4 A This document doesn't appear to have a Bates stamp.</p> <p>5 Is it --</p> <p>6 Q Mine has a Bates stamp of KP319, but the copy you</p> <p>7 have --</p> <p>8 A It appears to be different.</p> <p>9 Q -- we got from another source.</p> <p>10 (Pause)</p> <p>11 MR. FURMAN: Randy, can I see yours?</p> <p>12 MR. JOHNSTON: You bet.</p> <p>13 MR. FURMAN: Is it just that the copy is missing</p> <p>14 the Bates stamp?</p> <p>15 MR. JOHNSTON: My belief is that the ones you</p> <p>16 have, I had -- like you did yesterday, my legal</p> <p>17 assistant printed out. This is the copy we either got</p> <p>18 from Mr. Podlaski in the file production (indicating)</p> <p>19 or from Elyse. Because it has the KP, my belief is --</p> <p>20 MR. FURMAN: The only --</p> <p>21 THE WITNESS: This is a different date/time group</p> <p>22 --</p> <p>23 MR. FURMAN: Yeah, the documents seem different.</p> <p>24 Just so I can make the record clear, I'm comparing</p> <p>25 what is noted as KP00319 to 0320. It's a two-page</p>	<p style="text-align: right;">65</p> <p>1 (Pause)</p> <p>2 BY MR. JOHNSTON:</p> <p>3 Q All right.</p> <p>4 A To answer your question, that appears to be the</p> <p>5 paragraph that I sent along with the other paragraphs</p> <p>6 to Elyse and Mark Owen.</p> <p>7 Q So when you're talking about you proposed language to</p> <p>8 the contract to protect Mr. Owen in connection with</p> <p>9 the timing of a pre-publication review, the language</p> <p>10 in red on the front of that page is the language</p> <p>11 you're talking about?</p> <p>12 A I'll admit that I proposed this language in an effort</p> <p>13 to protect Mr. Owen from not -- well, from the</p> <p>14 publisher's requirement for the deadline. By</p> <p>15 submitting it to the Government, it would be out of</p> <p>16 his hands as to when or if the manuscript could be</p> <p>17 delivered.</p> <p>18 Q So what that -- what your proposed language protects</p> <p>19 him from is Dutton wanting to do a pre-publication</p> <p>20 review of the book?</p> <p>21 A No, that's not it at all.</p> <p>22 Q Well, read with me your proposal. "Although the</p> <p>23 author has no legal obligation to submit the</p> <p>24 manuscript to any agency of the U.S. Government for</p> <p>25 review or approval, at the publisher's option the</p>
<p style="text-align: right;">64</p> <p>1 document. And that has an email from Mr. Podlaski,</p> <p>2 dated January 19th at -- 2012 at 4:25 p.m. to Elyse</p> <p>3 Cheney with a copy to Kevin Podlaski.</p> <p>4 And the document that's marked as Exhibit 38 is</p> <p>5 also an email from Mr. Podlaski, dated January 19th.</p> <p>6 It doesn't have the day listed, as is on document</p> <p>7 ending in 19-20, and has a different time. Exhibit 38</p> <p>8 is listed as 3:25 p.m., whereas the document that</p> <p>9 Mr. Johnston provided me, which is KP0319-20 has 4:25</p> <p>10 p.m.</p> <p>11 It looks as if they're the same, and we could</p> <p>12 review them together. I don't want to make any</p> <p>13 assumptions, but could it have been simply just the</p> <p>14 process of printing out?</p> <p>15 MR. JOHNSTON: It may very well be. We can mark</p> <p>16 as the official exhibit my copy, which has the Bates</p> <p>17 number.</p> <p>18 THE WITNESS: Why don't we do that.</p> <p>19 MR. FURMAN: Yeah, that's fair enough. And it</p> <p>20 simply might have just been the matter of printing off</p> <p>21 of Microsoft Outlook, and I understand your office is</p> <p>22 one behind Eastern time, and that could be the</p> <p>23 difference in terms of the time. I'm just making the</p> <p>24 assumption, pretending to have better knowledge than</p> <p>25 anyone else in this room that might know.</p>	<p style="text-align: right;">66</p> <p>1 publisher may direct the author to submit the</p> <p>2 manuscript for a review. The parties recognize that</p> <p>3 the author has no control over a review, and therefore</p> <p>4 the author may not prescribe or impose a deadline by</p> <p>5 which the review -- the agency must perform the</p> <p>6 review." And I've paraphrased there.</p> <p>7 Those are your words paraphrased, correct?</p> <p>8 A That's correct.</p> <p>9 Q And do you disagree with me that everything -- well,</p> <p>10 let me continue. The next sentence, "Accordingly, if</p> <p>11 the publisher chooses to direct the author to submit,</p> <p>12 the author shall be relieved of the requirement to</p> <p>13 deliver the manuscript by June 1."</p> <p>14 Your words, correct?</p> <p>15 A That's right.</p> <p>16 Q There's nothing in here about Matt deciding to submit</p> <p>17 it to a pre-pub review, is there?</p> <p>18 A Because of the context in which not only we -- Matt</p> <p>19 and Elyse and I -- were discussing the publication</p> <p>20 contract, but also posturing it -- to my mind,</p> <p>21 posturing it in a more palatable manner to the</p> <p>22 publisher, giving them the decision to do so.</p> <p>23 The context was that Elyse didn't think that they</p> <p>24 were going to accept any changes to their contract,</p> <p>25 that if they did, they would be all hard fought and</p>

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<p style="text-align: right;">67</p> <p>1 that the decision about the contract's change really</p> <p>2 was in the publisher's ball -- I mean, it was in their</p> <p>3 park, and they were really the ones who decided</p> <p>4 whether they would accept these things or not.</p> <p>5 So I was attempting to posture this in a language</p> <p>6 that the publisher would buy in to, because it gave</p> <p>7 the publisher the opportunity to submit the book.</p> <p>8 Q And you started off your posturing with your proposed</p> <p>9 change on January the 19th by saying, "The author has</p> <p>10 no legal obligation to submit the manuscript to any</p> <p>11 agency for review or approval."</p> <p>12 A Right. And that comes as the result of the</p> <p>13 conversation with Matt Bissonnette and Elizabeth --</p> <p>14 well, with Matt Bissonnette about what he signed and</p> <p>15 what he didn't sign and about what his obligations</p> <p>16 were.</p> <p>17 Q Do you remember the date of your Engagement Letter?</p> <p>18 A I believe it's January 18th, isn't it?</p> <p>19 Q It says January 17 here. This is the unsigned one.</p> <p>20 If the signed one matches that --</p> <p>21 A It was about that time.</p> <p>22 Q So within a day or two of the signing of the</p> <p>23 Engagement Letter, you were already proposing an</p> <p>24 insert into the Dutton contract that confirms that</p> <p>25 Mr. Bissonnette had no legal obligation to submit for</p>	<p style="text-align: right;">69</p> <p>1 this email?</p> <p>2 A Yeah, I might be wrong about the dates, but, I mean,</p> <p>3 obviously, I wouldn't have written that if we hadn't</p> <p>4 had a discussion; so I might be wrong about the dates</p> <p>5 of that discussion. It was in early January.</p> <p>6 Q So that would then mean your sworn Answers to</p> <p>7 Interrogatories are also wrong again, correct?</p> <p>8 A Well, I don't know about the --</p> <p>9 MR. FURMAN: Objection.</p> <p>10 A -- "again" part of your comment.</p> <p>11 Q Let me address that, because I don't want to be unfair</p> <p>12 to you. You told me that there were phone calls that</p> <p>13 took place in June that are not in the Answers to</p> <p>14 Interrogatories, correct?</p> <p>15 A That's correct.</p> <p>16 Q So that would be a mistake, an error in the Answers to</p> <p>17 Interrogatories?</p> <p>18 MR. FURMAN: Objection.</p> <p>19 A No, it would be an omission that was an innocent</p> <p>20 omission.</p> <p>21 Q I'm not attempting to attach guilt or innocence here,</p> <p>22 innocence or not. You swore under oath in response to</p> <p>23 Answers to Interrogatories, on which you had at least</p> <p>24 30 days to think about it, that you had two phone</p> <p>25 calls with Mr. Bissonnette, January 19, January 26,</p>
<p style="text-align: right;">68</p> <p>1 a review, correct?</p> <p>2 A Once again, based on my conversations with him.</p> <p>3 Q That's the basis, but the fact is you made that</p> <p>4 proposed change, correct?</p> <p>5 A I made this proposed change apparently on the date</p> <p>6 that the email indicates.</p> <p>7 Q And the protection you were seeking to give</p> <p>8 Mr. Bissonnette in this proposed change is protecting</p> <p>9 him from the June 1 deadline obligation if the</p> <p>10 publisher decided to submit independent of</p> <p>11 Mr. Bissonnette, correct?</p> <p>12 A No. As I said, you have to consider the context of</p> <p>13 it, and it was a way to posture it so that the</p> <p>14 publisher would buy in to the idea. We had -- Matt</p> <p>15 and I had discussed that the safest course was to</p> <p>16 submit the book for review, and this was my effort to</p> <p>17 get the book to the Government for a review and it was</p> <p>18 putting the decision to relieve Matt of the timeline</p> <p>19 imposed by the publisher onto the publisher.</p> <p>20 Q Can you explain to me why you are telling Ms. Cheney,</p> <p>21 your client Mr. Bissonnette, on January 19 that he has</p> <p>22 no legal obligation to submit the manuscript for</p> <p>23 review, when, according to your earlier testimony,</p> <p>24 everything you relied upon to make that decision</p> <p>25 occurred in a phone call on January 25, six days after</p>	<p style="text-align: right;">70</p> <p>1 and a couple in February; and you swore those were the</p> <p>2 only phone calls you had with him, in your Answers to</p> <p>3 Interrogatories, correct?</p> <p>4 A Well, those were the ones that I recalled when I</p> <p>5 prepared the Interrogatories.</p> <p>6 Q And you took the preparation of Answers to</p> <p>7 Interrogatories that you are swearing to under oath</p> <p>8 and as an officer of the Court very seriously,</p> <p>9 correct?</p> <p>10 A When I answered the Interrogatories, I answered them</p> <p>11 with what I knew and what I recalled at the time.</p> <p>12 Q And there is no document that would have refreshed</p> <p>13 your memory of, "Oh, yeah, there was another phone</p> <p>14 call in June," correct?</p> <p>15 A I don't believe that there is.</p> <p>16 Q And if everything you told me about what happened in</p> <p>17 the January 25 phone call and what you described as</p> <p>18 having occurred in the January 25 phone call in your</p> <p>19 Answers to Interrogatories really took place in a</p> <p>20 phone call on January 19, that would be another error</p> <p>21 in your sworn Answers to Interrogatories in this case.</p> <p>22 A That would be your opinion, but it could be January</p> <p>23 18th that those conversations took place, and so it</p> <p>24 would just be because a couple years had passed and --</p> <p>25 you know, I wish I had a photographic memory, but I</p>

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<p style="text-align: right;">71</p> <p>1 don't. So to the best of my memory and recollection,</p> <p>2 I both answered the Interrogatories with all of the</p> <p>3 information that I knew and recalled at the time and</p> <p>4 my testimony today with all of the information that I</p> <p>5 recall.</p> <p>6 And moreover, we've seen that there's a couple</p> <p>7 different versions of this, so I'm not sure if the</p> <p>8 dates are even correct on this document.</p> <p>9 Q Do you question the dates?</p> <p>10 A I do.</p> <p>11 Q So you don't believe you sent this email on January</p> <p>12 19?</p> <p>13 A I didn't say that. I just said I question the dates.</p> <p>14 There's apparent discrepancies between the two</p> <p>15 versions that you've produced.</p> <p>16 Q Is there a discrepancy on the date?</p> <p>17 A There's a discrepancy on the time.</p> <p>18 Q Is there a discrepancy on the date?</p> <p>19 A There appears not to be, but there's a discrepancy on</p> <p>20 the time and a discrepancy on other marginal</p> <p>21 information that leads me to believe that there may be</p> <p>22 other versions out there.</p> <p>23 Q Other than what is reflected on Exhibit 38, did you</p> <p>24 propose any other changes to the Dutton contract that</p> <p>25 reflect Mr. Bissonnette's obligation to do a</p>	<p style="text-align: right;">73</p> <p>1 Q And during your roughly 22 years in the military, were</p> <p>2 you a JAG Officer that entire time?</p> <p>3 A No.</p> <p>4 Q When did you become a JAG Officer?</p> <p>5 A 1991.</p> <p>6 Q Did the military pay for your attendance at law</p> <p>7 school?</p> <p>8 A No.</p> <p>9 Q So how did you go -- let me ask this.</p> <p>10 Had you already graduated from law school in '82?</p> <p>11 A No.</p> <p>12 Q So you went to law school while you were in the</p> <p>13 military?</p> <p>14 A For -- I had a break in service of 22 months. So I</p> <p>15 went to law school at night for two of the four years</p> <p>16 while I was on active duty.</p> <p>17 Q All right. And so you then graduated from law school</p> <p>18 and passed the Bar -- went to law school, graduated</p> <p>19 from law school, passed the Bar Exam during the time</p> <p>20 of your military service?</p> <p>21 A On active duty for two of the four years. Then I was</p> <p>22 out in the Reserves, and then I got called up during</p> <p>23 Desert Shield.</p> <p>24 Q Okay. So you had left active duty when you started</p> <p>25 law -- during part of your law school?</p>
<p style="text-align: right;">72</p> <p>1 pre-publication review?</p> <p>2 A As I sit here today, I can't recall if there were any</p> <p>3 other ones.</p> <p>4 Q In connection with your -- let me for a moment go into</p> <p>5 your military career, sir; and some of this I just</p> <p>6 need to know for background.</p> <p>7 When did you begin your military career, year?</p> <p>8 A 1982.</p> <p>9 Q And when -- do you still have your Commission?</p> <p>10 A I'm retired.</p> <p>11 Q Have you resigned your Commission?</p> <p>12 A Well, when one retires, you're still subject to</p> <p>13 recall, but the further out you are from retirement</p> <p>14 the less likely.</p> <p>15 Q I realize that.</p> <p>16 A So answering your question, no, I did not resign my</p> <p>17 Commission.</p> <p>18 Q Okay. When did you retire from the military?</p> <p>19 A 2004, I believe it was.</p> <p>20 Q And what was the rank at the time you retired?</p> <p>21 A Major.</p> <p>22 Q Which branch of the service?</p> <p>23 A Army.</p> <p>24 Q How did you enter the military, with what rank?</p> <p>25 A I entered as a Second Lieutenant, ROTC Commission.</p>	<p style="text-align: right;">74</p> <p>1 A I left active duty after my second year.</p> <p>2 Q Okay. And then you were in the Reserves and were</p> <p>3 recalled?</p> <p>4 A During Desert Shield.</p> <p>5 Q And when you were recalled, were you -- had you</p> <p>6 already passed the Bar and become a lawyer?</p> <p>7 A I was a lawyer for about six months before that.</p> <p>8 Q Okay. And did you, upon being recalled, immediately</p> <p>9 enter the JAG Corps, or was it thereafter?</p> <p>10 A I was branch transferred to the JAG Corps prior to</p> <p>11 being called up.</p> <p>12 Q Okay. During your time in the military, did you have</p> <p>13 any combat service?</p> <p>14 A No.</p> <p>15 Q Did you have any time when you were stationed in the</p> <p>16 Middle East anywhere?</p> <p>17 A Wait. Let me go back. I'm sorry. I thought you were</p> <p>18 talking about the first time I was in the military.</p> <p>19 I was stationed in Bosnia, so that qualified as</p> <p>20 combat area.</p> <p>21 Q I may have interrupted you. Anywhere other than</p> <p>22 Bosnia?</p> <p>23 A I was -- the units I was deployed with, we deployed</p> <p>24 regularly to South America in counternarcotics and</p> <p>25 counterterrorism.</p>

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<p style="text-align: right;">75</p> <p>1 Q And did you personally serve in South America on those 2 assignments?</p> <p>3 A Yes.</p> <p>4 Q And when did you become associated with SOCOM, the 5 Special Operations Command?</p> <p>6 A In 1991 I was assigned to Special Forces Headquarters, 7 and then I believe it was '92 I was assigned as the 8 7th Special Forces Group Judge Advocate, and both of 9 those assignments were at Fort Bragg, North Carolina.</p> <p>10 Q And did you have any other changes in assignment 11 involving SOCOM from '92 on?</p> <p>12 A Yes. After 7th Special Forces Group, I did a tour 13 with 18th Airborne Corps, again --</p> <p>14 Q I'm sorry, with whom?</p> <p>15 A 18th Airborne Corps.</p> <p>16 Q Thank you.</p> <p>17 A And then the Army sent me to University of Virginia 18 where the Army has its advanced course for attorneys, 19 and was there for a year, got an LLM, and then was in 20 Germany for four years, and then was assigned as the 21 Staff Judge Advocate for Special Operations Command 22 South.</p> <p>23 Q During the time you were in Germany, were you still 24 associated with SOCOM?</p> <p>25 A No. I was only -- once I left 7th Group, then I went</p>	<p style="text-align: right;">77</p> <p>1 of the Army Special Forces, but primarily it consists 2 of the Green Berets and it consists of Special 3 Operations Aviation Regiment.</p> <p>4 Q In connection with your time in service with SOCOM, 5 did you ever have connection with operations that were 6 a combination of Army Special Forces and SEALs 7 together?</p> <p>8 A Yes.</p> <p>9 Q How many times?</p> <p>10 A With SOCOM, I was -- well, with Special Operations 11 Command South.</p> <p>12 Q And to serve in the positions that you served in, did 13 you sign your own non-disclosure agreements?</p> <p>14 A Yes.</p> <p>15 Q Are you familiar with the non-disclosure agreements 16 that Special Force Operators would have signed?</p> <p>17 A Yes.</p> <p>18 Q Are those the same forms that Navy SEALs would have 19 signed?</p> <p>20 A There is the Standard Form 312 for classified 21 information, non-disclosure agreements we discussed 22 previously, and there's the DD Form 1847-1 for 23 Sensitive Compartmented Information and Special Access 24 Programs. That's the highest level that I've worked 25 at or been exposed to. There may be others.</p>
<p style="text-align: right;">76</p> <p>1 to 18th Airborne Corps. That was the end of my 2 association with SOCOM. My -- SOCOM is a 3 headquarters, a 4-star headquarters that does training 4 and doctrine.</p> <p>5 So, that's -- to make a long story short, there's 6 Combatant Commands in Special Operations and there's 7 Training and Doctrine Commands in Special Operations. 8 So I was in 7th Group as a Combatant Command, and I 9 was in Special Operations Command South as a Combatant 10 Command. Headquarters Special Forces Command was a 11 Training and Doctrine, which is -- Headquarters 12 Special Forces Command directly falls under USSOCOM, 13 and 7th Special Forces Group falls under Special 14 Forces Command, but not for anything other than 15 Training and Doctrine.</p> <p>16 Q When you say "Special Forces," what does that 17 encompass in the Army?</p> <p>18 A Well, US Army Special Forces are -- there's Special 19 Forces Green Berets. US Army Special Forces Command 20 has what's known -- publicly known as Green Berets, 21 but associated in support of Special Forces is Special 22 Operations Aviation Regiment, which is helicopter 23 units. And there's people who have Special Operations 24 designation, meaning that they are qualified to work 25 with Special Operations or Special Forces in support</p>	<p style="text-align: right;">78</p> <p>1 Q My question is are those the same forms for SEALs as 2 for Special Forces Operators in the Army?</p> <p>3 A The Department of Defense forms and the standard 4 forms, yes.</p> <p>5 Q And when you left the military, are there signs you 6 also -- I'm sorry. Are there also forms you also 7 signed when you were departing your military service?</p> <p>8 A Well, when you -- yes, there are. But when you leave 9 a Special Operations Unit, you are debriefed and you 10 are sometimes questioned on your debriefing. There's 11 forms that you have to sign. And then there's always, 12 in my experience, a debriefing officer who is with the 13 Intelligence Section, debriefs you about all of your 14 foreign contacts, about all of the deployments that 15 you've been on; and moreover, if you are in a 16 compartmented program, you sign into that program and 17 upon conclusion of either your need to know or the 18 mission, you sign out and you're debriefed on that 19 particular mission.</p> <p>20 Q Is it fair to say that as an attorney in the JAG Corps 21 of the Army with your SOCOM experience, you would have 22 been familiar with the types of documents 23 Mr. Bissonnette would have signed during his career as 24 a Navy SEAL ultimately at the end of his career up 25 into DEVGRU, up into the Development Group?</p>

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<p style="text-align: right;">79</p> <p>1 A Well, I think you have to be a little more specific.</p> <p>2 That's a pretty broad range. Would I be familiar</p> <p>3 with the classified information documents that he's --</p> <p>4 Q Let's stay with that. That's what I meant.</p> <p>5 A Yeah, I think across the board -- I was in a Joint</p> <p>6 Unit, and we used DoD forms, and we used standard</p> <p>7 forms as required, and so I would be familiar with</p> <p>8 regard to those documents.</p> <p>9 Q And specifically with regard to the documents that are</p> <p>10 attached to the Jeh Johnson letter, which is Exhibit</p> <p>11 1, are those forms you would have expected</p> <p>12 Mr. Bissonnette to have signed during the course of</p> <p>13 his career and upon his exiting the service?</p> <p>14 A Well, yes, generally. Those forms -- for example,</p> <p>15 the -- there's a copy of the DD Form 1847-1 for 2007,</p> <p>16 and those forms normally are associated -- there</p> <p>17 should be a form for every compartmented or Special</p> <p>18 Access Program that you're signed into. There should</p> <p>19 also be a debriefing form for each program that you're</p> <p>20 signed into. Now, you -- I've seen used where a</p> <p>21 soldier or Airman or Navy SEAL have been involved with</p> <p>22 more than one compartmented program and they may be</p> <p>23 recorded on the same document but separate entries for</p> <p>24 the dates that they were read on, and then a</p> <p>25 debriefing form should likewise marry up with each of</p>	<p style="text-align: right;">81</p> <p>1 level. He said no. I said -- in addition to not</p> <p>2 recalling what exactly he did sign, with the exception</p> <p>3 of the Standard Form 312. I said, "Well, I could</p> <p>4 contact your former Unit Security Officer, and this is</p> <p>5 just a simple document that says what your highest</p> <p>6 level of access was, and that would enable us to make</p> <p>7 a better decision." He said no, he did not want them</p> <p>8 to know he was writing a book.</p> <p>9 Q And is that recorded in any document that you know of?</p> <p>10 A No. No, it's not, because at the time, he was very,</p> <p>11 very emphatic about not having a great deal of</p> <p>12 information and paper trails with the information</p> <p>13 about the book.</p> <p>14 Q When did that -- was that a telephone call?</p> <p>15 A Yes.</p> <p>16 Q When did that discussion take place?</p> <p>17 A January 2012.</p> <p>18 Q January 19 or 25?</p> <p>19 A In there somewhere, yeah.</p> <p>20 Q You don't know which one?</p> <p>21 A I don't recall as I sit here which one. It could have</p> <p>22 been earlier than that.</p> <p>23 Q In any of the -- strike that.</p> <p>24 Is it improper or illegal for someone who has</p> <p>25 signed forms like the ones attached to Exhibit 1 to</p>
<p style="text-align: right;">80</p> <p>1 the read-on programs or each of the compartmented</p> <p>2 programs they were read on to, read off of.</p> <p>3 Q Was it your experience in SOCOM in the JAG Corps that</p> <p>4 copies of the documents that operators signed were</p> <p>5 given to them after they signed them?</p> <p>6 A Generally those documents were not given to.</p> <p>7 Q Did it surprise you then that Mr. Bissonnette did not</p> <p>8 have copies of documents he had signed during his</p> <p>9 career?</p> <p>10 A It didn't surprise me that he did not have them, but I</p> <p>11 had asked him specifically if I could contact his</p> <p>12 former Security Officer at his former unit and request</p> <p>13 his -- the documents associated with his debriefing.</p> <p>14 And there's also a form that's used to show the</p> <p>15 highest level of classification that you have access</p> <p>16 to. And he denied my request to do so.</p> <p>17 Q I asked you earlier if he ever acted against your</p> <p>18 advice. Was that acting against your advice, by</p> <p>19 denying that request?</p> <p>20 A Well, it was one of those things -- and this was</p> <p>21 pretty early on. He was very concerned about his</p> <p>22 security. He was also concerned about letting anybody</p> <p>23 know he was writing the book, as he expressed</p> <p>24 yesterday as well, and so when I -- I did ask him if</p> <p>25 he had any documents related to his classification</p>	<p style="text-align: right;">82</p> <p>1 write a book while they are on active duty?</p> <p>2 A It's not illegal to write a book while you're on</p> <p>3 active duty, but there are regulations that require</p> <p>4 you, irrespective of the documents that you've signed,</p> <p>5 the Classified Information Non-Disclosure</p> <p>6 Agreements -- there are -- and specifically there's a</p> <p>7 DoD directive that requires anyone on active duty to</p> <p>8 submit to the office -- what used to be known as the</p> <p>9 Office of Security and Policy Review; now I believe</p> <p>10 it's known as the Office of Pre-Publication and</p> <p>11 Security Review -- to submit any proposed public</p> <p>12 speech or published writing for review if there is</p> <p>13 classified information in it or you're uncertain as to</p> <p>14 whether there's classified information in it.</p> <p>15 Q So -- and the point that -- the distinction that I was</p> <p>16 trying to make here is these documents do not prohibit</p> <p>17 someone like Mr. Bissonnette from writing a book while</p> <p>18 he is on active duty; they deal with his publishing</p> <p>19 the book, correct?</p> <p>20 A Yes, that's correct.</p> <p>21 Q So whether he was on active duty or not when he was</p> <p>22 writing the book is really irrelevant, isn't it?</p> <p>23 A It just has to do with his obligation to submit the</p> <p>24 book. So you could write a book, you can write</p> <p>25 memoirs and notes, as long as -- if you're writing</p>

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<p style="text-align: right;">83</p> <p>1 about classified information and it's not secured, 2 you're in violation of the regulation. If you are 3 capturing information from a Special Access Program 4 that mentions tactics, techniques, procedures, 5 communications, equipment, and it's not in a secure -- 6 actually what it's called is a SKIF, a Sensitive 7 Compartmented Information Facility, you're violating 8 the regulation. So -- 9 (Exhibit 14 10 presented to the witness) 11 Q Let me show you what has been -- what was marked 12 yesterday as Exhibit 14. And do you have it there? 13 MR. FURMAN: I don't have 14. 14 MR. JOHNSTON: This is one of the ones you marked 15 yesterday, so I only have my copy of it. 16 MR. FURMAN: Okay. 17 MR. JOHNSTON: May I walk around so I can direct 18 you all to what I'm talking about here? 19 MR. FURMAN: Sure. 20 (Pause) 21 Q And you may look at or ignore my highlighting, because 22 this is my copy, but do you remember seeing this 23 document yesterday, Exhibit No. 14? 24 A Yeah, I recall seeing this yesterday. 25 Q Let me direct your attention to the latter half of</p>	<p style="text-align: right;">85</p> <p>1 Q So you will admit that you were hired to review for 2 that? 3 A As I said, the Engagement Letter says it all. So it 4 says I'm reviewing the publishable manuscript to 5 ensure that he's in compliance with his obligations, 6 and that's part of the review process. 7 Q The operational tactics, techniques, and procedures 8 are part of the review process? 9 A That's what you're screening for. 10 Q And the next sentence, "Mark seems to have a very 11 clear understanding of what this lawyer is saying. He 12 is going to get his papers from the Command Office and 13 then show those papers to this Indiana lawyer." 14 That did not happen, correct? 15 A That's right. 16 Q Do you know why it didn't happen? 17 A As I said, he said he didn't have any and he refused 18 to allowed me to contact his Security Officer to get 19 them. 20 Q Then the next sentence, "The Indiana lawyer suggested 21 that Mark definitely not tell anyone in the Command 22 Office that he's doing a book." 23 Did you recommend that Mark definitely not tell 24 anyone in the Command Office that he was doing a book? 25 A I don't believe so.</p>
<p style="text-align: right;">84</p> <p>1 page 1. It purports to be an email from Elyse Cheney, 2 dated January 12. You may have to look at the page 3 before to see who it was to, but at the top Richard 4 Heller, right? And let me specifically direct you to 5 the second paragraph there. "We have a different 6 lawyer now in terms of the military review stuff. 7 It's a guy actually in Indiana who was a Special 8 Forces guy himself and then an attorney there and who 9 knows the agreements that anyone enlisted signs." 10 Is that you they're talking about there? 11 A I have no idea. 12 Q Okay. "The key is that this lawyer be hired by 13 Penguin eventually to vet the manuscript and make sure 14 essentially that Mark is not revealing operational 15 tactics, techniques, and procedures." 16 Let's talk about that sentence for a minute. You 17 were never hired by Penguin, correct? 18 A That's correct. 19 Q But you were hired to make sure that Mark is not 20 revealing operational tactics, techniques, or 21 procedures? 22 A I'll admit only that I agreed to do what's in the 23 Engagement Letter, and that was -- a part of the 24 review is to review for operational tactics -- 25 tactics, techniques, and procedures.</p>	<p style="text-align: right;">86</p> <p>1 Q "That if he did they could potentially try to stop him 2 from leaving the military." 3 Does that sound familiar to you? 4 A No. And this is from Elyse Cheney, so I can tell you 5 right from the beginning that she did not have a good 6 grasp of much. I mean, the "military review stuff" is 7 what she says here, and saying I was a Special Forces 8 guy myself, never said that. So if this is from her 9 and they are talking about me, it illustrates that she 10 doesn't have a very good grasp and understanding of 11 what the issues were. 12 Q And I will not attempt to defend her complete 13 understanding of these issues. I see some of the 14 points you're raising. If -- had you spoken to her by 15 January 12? 16 A Yeah. That's what led me to believe that my dates 17 might be off, because I think I did speak to her early 18 on, and that was the first phone call I got from her, 19 and she was very cryptic at first and very circumspect 20 in not mentioning the person's name nor the mission 21 that the military person wanted to write a book about. 22 So to answer your question directly, I did speak 23 with her earlier in 2000 -- earlier in January of 24 2012. I mean, when I spoke to her, it was clear she 25 didn't really want to be burdened with the details of</p>

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<p style="text-align: right;">87</p> <p>1 anything having to do with the obligations about</p> <p>2 classified information or an understanding of it.</p> <p>3 Q Do you still have in front of you here, sir, your</p> <p>4 memorandum to the record, or memorandum of record that</p> <p>5 you dictated for yourself and the file?</p> <p>6 MR. FURMAN: You marked it as Exhibit 35.</p> <p>7 MR. JOHNSTON: Thank you.</p> <p>8 A Yes.</p> <p>9 Q What does that say in your Paragraph 1?</p> <p>10 A It says, "On or about January 10th, 2012, I was</p> <p>11 contacted by a literary agent from New York City or</p> <p>12 NYC, Elyse Cheney, who asked me to assist a former</p> <p>13 Navy SEAL who was preparing a manuscript about his</p> <p>14 military career, and in particular his participation</p> <p>15 in Operation Neptune Spear, which targeted Osama bin</p> <p>16 Laden."</p> <p>17 Q So would that indicate to you that Ms. Cheney had</p> <p>18 spoken to you by the time she wrote this January 12</p> <p>19 email to Mr. Heller?</p> <p>20 A It appears to be so.</p> <p>21 Q And while she may have gotten some things wrong, would</p> <p>22 it appear to you that she is trying to report the</p> <p>23 substance of her conversation with you in part?</p> <p>24 MR. FURMAN: Objection.</p> <p>25 A Yeah, that would cause me to speculate. I don't know</p>	<p style="text-align: right;">89</p> <p>1 on active duty. But I seriously doubt that my -- I</p> <p>2 told him, "Don't tell anyone," because he's the one</p> <p>3 telling me that he didn't want anyone to know.</p> <p>4 So it would be the ramifications of what could</p> <p>5 happen, once again, just trying to give him enough</p> <p>6 information so he has all of the cards. In order to</p> <p>7 be discharged from active duty, you need three things.</p> <p>8 You need a DD Form 214, you need orders, and you need</p> <p>9 a Final Pay and Accounting, and we discussed that as</p> <p>10 well. And he told me that he was to get that February</p> <p>11 1st, that he would be getting his discharge paperwork</p> <p>12 February 1st.</p> <p>13 Q Is there anything about his -- the receipt of his</p> <p>14 actual discharge papers being either in January or</p> <p>15 February or April or June -- and we've seen all of</p> <p>16 those dates at various times -- that bears on your</p> <p>17 advice to him?</p> <p>18 A Certainly. As I said, if he's on active duty and he's</p> <p>19 writing material that could be considered classified</p> <p>20 or from a Special Access Program, then he -- you can't</p> <p>21 put pen to paper unless you have a secure facility to</p> <p>22 store the paper in. And so if you're writing a book</p> <p>23 about classified information -- or containing</p> <p>24 classified or containing potential classified</p> <p>25 information, you're in violation of the regulation if</p>
<p style="text-align: right;">88</p> <p>1 what she was trying to do.</p> <p>2 Q Let me ask you this -- and I may have asked this, but</p> <p>3 to be safe -- did you tell Mr. Bissonnette definitely</p> <p>4 not to tell anyone in Command he was writing a book?</p> <p>5 A I don't believe I ever told him that.</p> <p>6 Q The latter half of that sentence says, "If he did,</p> <p>7 they could potentially stop him from leaving the</p> <p>8 military."</p> <p>9 Do you remember saying anything like that?</p> <p>10 A We -- like I said, the first phone call was with</p> <p>11 Elyse, and then there's a phone call with Elyse and</p> <p>12 Mark. I remember that distinctly. We discussed --</p> <p>13 Q May I see your exhibit here?</p> <p>14 A We discussed several things, and one of the things we</p> <p>15 discussed was what his current status was, and he told</p> <p>16 me he was currently on transition or terminal leave</p> <p>17 and was going to be out of the military February 1st.</p> <p>18 And so if this conversation was in early July -- so</p> <p>19 it's plausible we had a discussion concerning his --</p> <p>20 well, it kind of goes to my point. It proves my point</p> <p>21 that we had a discussion about what your obligations</p> <p>22 are on active duty and reporting and submitting</p> <p>23 materials. And so it's plausible that we discussed</p> <p>24 that if they became aware of the -- him writing a book</p> <p>25 about the matter, that they may have tried to keep him</p>	<p style="text-align: right;">90</p> <p>1 you're doing so -- if you're doing so while you're on</p> <p>2 active duty and you don't properly store it.</p> <p>3 Q So do you have any indication that he did not properly</p> <p>4 store whatever writing he did while he was still on</p> <p>5 active duty?</p> <p>6 A Well, that causes me to speculate. I mean, I just</p> <p>7 know that he and the ghost writer had prepared drafts,</p> <p>8 and I saw the final copy. So I have no idea.</p> <p>9 Q So has anyone, to your knowledge, ever complained</p> <p>10 about the fact -- the Government specifically -- that</p> <p>11 he was writing while on active duty and failed to</p> <p>12 secure the writing in a manner that would protect it?</p> <p>13 A I can't answer that question.</p> <p>14 Q You know nothing about that one way or the other?</p> <p>15 A I can't answer that question, because I don't believe</p> <p>16 it was discussed. So --</p> <p>17 Q So what is an author's obligation with regard to</p> <p>18 secure storage after he is out of the military?</p> <p>19 A Well, I mean, first off, you don't want to be writing</p> <p>20 about things from a Special Access Program, and this</p> <p>21 is the things -- these are the things that concern the</p> <p>22 Government, is information from Special Access</p> <p>23 Programs getting out into the public without review</p> <p>24 and control of what it is. So, I mean, you have to</p> <p>25 have a plan to take out the trash. And I don't</p>

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<p style="text-align: right;">91</p> <p>1 believe that there was a plan in place. As Matt 2 testified to yesterday and had previously said, he 3 wasn't planning on giving information that was going 4 to harm the United States, and I certainly wouldn't 5 have assisted him, and so -- I mean, he didn't have 6 that many changes. I didn't have that many changes to 7 his book, and I thought that they did do a good job of 8 screening out potentially classified information. 9 But as I said, you don't know what you don't 10 know; and when you write, you write at your own peril 11 for the Government coming back, if you don't submit 12 it, for saying that even if it's in the public domain, 13 you're confirming the fact in the public domain, and 14 they consider that to be a violation of the Classified 15 Information Non-Disclosure Agreement. 16 Q Objection; nonresponsive. 17 My question may have been unclear, so let me try 18 again. You testified that someone on active duty who 19 is writing a book that might even contain sensitive 20 information has to make certain how they store it to 21 be sure it doesn't get out. 22 Did I understand that correctly? 23 A That's the concern and yeah, generally, that's what -- 24 that's why if you're on active duty, you can't -- they 25 don't want you to release information without it being</p>	<p style="text-align: right;">93</p> <p>1 don't have access. 2 Q Do you still have that DISCO clearance? 3 A I think it's expired now, but in connection with this 4 book, I think I have a TSSCI, again from the 5 Department of Defense and Department of Justice. 6 Q What's that? 7 A Top Secret Sensitive Compartmented Information 8 clearance in connection with this matter. 9 Q So in connection with your discussions with the 10 Government about the investigation of Mr. Bissonnette? 11 A Under my obligations, all I'm going to say is the 12 Government requested that I undergo a full background 13 investigation, and then my belief is that I have been 14 assigned a TSSCI in connection with their questioning 15 of me. 16 Q Is it your belief that you still have that TSSCI, or 17 is it limited to their questioning of you? 18 A Generally -- well, I'm sorry. When you undergo a 19 background investigation, you don't -- it's usually 20 not for a limited time. It's -- well, no, let me 21 rephrase that. I'm sorry. 22 Generally, background investigations are good for 23 five years, but that doesn't mean you have access. It 24 just means that you are eligible, and if you have a 25 change in your -- anything that would be considered</p>
<p style="text-align: right;">92</p> <p>1 vetted. 2 Q I get that. Is it not true that even after you were 3 out of the service, if you're writing a book that 4 might contain sensitive information, you have an 5 obligation to protect that storage of the information 6 the same as if you were on active duty, until it's 7 cleared and clean and can go to the public? 8 A I can't disagree with you. 9 Q Okay. Now, did you consider -- let me jump to a 10 couple of predicate questions here. 11 In January of 2012, did you still have -- I'll 12 say still have any form of governmental security 13 clearance? 14 A In January of 2012, I had what's called a DISCO 15 clearance, which is Defense Industrial Security 16 Clearance Office, which is DoD industry for certain 17 programs that require vendors to be classified. I had 18 been working with a vendor who was involved with both 19 DoD and Department of State contracting, and they 20 wanted me to be cleared so that I could review 21 documents for them. So at the time, I had a DISCO 22 clearance of "Secret". But just because you have 23 clearance doesn't mean you have a need to know. 24 Q Right. 25 A And if you're not read on to a program, you still</p>	<p style="text-align: right;">94</p> <p>1 disqualifying -- you get DUI, you file bankruptcy, 2 you're accused of a crime -- then you have an 3 obligation to report to the issuing agency that you 4 have this issue, and then they send your 5 information -- they have you fill out some forms, you 6 fill out your information, and it gets sent to what 7 they call an Adjudication Facility to determine 8 whether you still have access -- whether you still can 9 access classified information at that level you were 10 issued at or not. 11 So in answer to your question, do I still have 12 TSSCI? I believe so, for the remainder of the five 13 years after I was vetted. 14 Q I'm going to go back to the January time frame for 15 just a minute. 16 A Of 2012? 17 Q 2012, yes, sir. When you have your recordings on your 18 Memorandum of Record of the phone calls with 19 Mr. Bissonnette and we were talking about what can and 20 cannot happen when you are on active duty versus when 21 you're out of the service, when you've been 22 discharged, it was your understanding during those 23 January phone calls that he was still on active duty? 24 A Until February 1st. He told me he was out on February 25 1st.</p>

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<p style="text-align: right;">95</p> <p>1 Q Okay. Did you in those phone calls say anything to</p> <p>2 him about not writing anything until he was out?</p> <p>3 A I think there was a discussion about whether he had</p> <p>4 written anything, and he said no, he had not written</p> <p>5 anything yet, and that was —</p> <p>6 Q So did you tell him not to change that because he's</p> <p>7 not out?</p> <p>8 A Well, I think part of the discussion was when he told</p> <p>9 me he was going to get with the ghost writer and pour</p> <p>10 it out to him — and I think that's the term he</p> <p>11 used — what he wanted to put out in the book, and he</p> <p>12 said that that wasn't going to happen until March or</p> <p>13 early April.</p> <p>14 Q I understand. Simple question. Did you give him any</p> <p>15 advice about what he should not do before he got out?</p> <p>16 A I'm sorry. I didn't tie it in. So, no, I didn't say</p> <p>17 to him, "Hey, don't write anything until you get out,"</p> <p>18 because his words to me indicated that he wasn't going</p> <p>19 to do so until he was, as far as I knew, out after</p> <p>20 February 1st.</p> <p>21 Q Okay. In light of what you have told me about</p> <p>22 security clearance and what I'll call a second issue,</p> <p>23 which is either need to know or authority, do you</p> <p>24 believe it was lawful for Mr. Bissonnette to send the</p> <p>25 unreviewed transcript of his book to you when he did</p>	<p style="text-align: right;">97</p> <p>1 There was not a plan in place to take out the trash,</p> <p>2 because he had said to me at least once, maybe more,</p> <p>3 that he was not going to put anything in the book that</p> <p>4 was going to be controversial. He was not going to</p> <p>5 put anything in the book that would compromise</p> <p>6 anybody, and he was not going to put anything in the</p> <p>7 book to compromise national security. I had no reason</p> <p>8 to doubt it.</p> <p>9 Q Do you doubt that as you sit here today?</p> <p>10 A No.</p> <p>11 Q As you sit here today, knowing everything you have</p> <p>12 learned since January of 2012, do you believe that he</p> <p>13 had an obligation to submit the book to a</p> <p>14 pre-publication review?</p> <p>15 MR. FURMAN: Objection.</p> <p>16 You can answer.</p> <p>17 A Knowing what I know now?</p> <p>18 Q Yes, sir.</p> <p>19 A That decision, once again, is with the client, for the</p> <p>20 client to make. We know now that the Government is</p> <p>21 claiming that he signed a DD Form 1847-1 in 2007.</p> <p>22 There was no 1847-1 produced in connection with the</p> <p>23 Operation Neptune Spear in 2011.</p> <p>24 Q I understand.</p> <p>25 A Well, let me finish. He did sign an SF Form 312. In</p>
<p style="text-align: right;">96</p> <p>1 in, I think, mid to late June?</p> <p>2 A Well, the lawfulness of that is not really my call to</p> <p>3 make. It's the Government's call.</p> <p>4 Q Did you have any concern about exposing him to any</p> <p>5 criminal or civil liability when you requested that he</p> <p>6 send the manuscript to you for vetting?</p> <p>7 A Well, it was part of the contract. So when you say</p> <p>8 did I have a concern for his civil or criminal</p> <p>9 liability, at that point I would say no, because</p> <p>10 that's the standard process, is to prepare the book,</p> <p>11 submit the book to the Government, and have the</p> <p>12 Government come back and tell you to issue changes.</p> <p>13 And they sometimes say, "Come back" — they come back</p> <p>14 and say, "You can't publish this. Destroy everything</p> <p>15 you have." Or they come back and say, "You can't</p> <p>16 publish this as it is. Here's the redactions we want</p> <p>17 you to make, and you should delete all previous</p> <p>18 versions and then send us your affirmation that you've</p> <p>19 done so."</p> <p>20 So, I knew that there was a process in place, but</p> <p>21 once again, hey, look, here's the thing. Here's this</p> <p>22 guy who is on a most sensitive mission that the US had</p> <p>23 had in quite a while, and he did not want to</p> <p>24 compromise the security of the United States or</p> <p>25 anybody who had undertaken that mission with him.</p>	<p style="text-align: right;">98</p> <p>1 Paragraph 3 it says, "If you question"; so if there is</p> <p>2 a discretion in the author's mind about whether</p> <p>3 anything he was going to write was classified or not.</p> <p>4 I believe that the Government's contention is</p> <p>5 that it was a Special Access Program. I haven't seen</p> <p>6 any evidence to connect the Special Access Program</p> <p>7 with Operation Neptune Spear, but that doesn't mean</p> <p>8 that he wasn't briefed and told, because as is</p> <p>9 standard in all of the pre-deployment briefings that</p> <p>10 I've done and all of the pre-deployment briefings I've</p> <p>11 witnessed, every briefer comes in and tells you, "I'm</p> <p>12 about to brief you on this. This is classified at</p> <p>13 this level."</p> <p>14 And I would say that the Special Operations</p> <p>15 community understands what's called "Big Boy Rules,"</p> <p>16 that you know what the rules are. "I don't have to</p> <p>17 remind you every time I see you. You're not an E1,</p> <p>18 you're not a dumb shit, and you understand what your</p> <p>19 obligations are."</p> <p>20 So if there is — in this mission, maybe someone</p> <p>21 from the CI briefed him and said, "I'm about to brief</p> <p>22 you on this, and this is the classification level, Big</p> <p>23 Boy Rules apply." Everybody in the room nods and</p> <p>24 understands, and if that person comes forward and</p> <p>25 makes an affidavit to say that it was indeed a Special</p>

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<p style="text-align: right;">99</p> <p>1 Access Program, I don't know if there is too much you 2 can do about it. 3 I don't know if I answered your question except 4 to deal with the objective facts, and the objective 5 facts are no one has produced a DD Form 1847-1 in 6 connection with Operation Neptune Spear. 7 Q And so knowing that no one has produced that -- and 8 let's assume no one can, for argument's sake -- do you 9 believe he -- sitting here today, do you believe he 10 had an obligation to submit the book for a 11 pre-publication review? 12 A You're asking me for my opinion, and as I said, it's 13 complicated, and my opinion is not determinative, and 14 that's a decision for the Government. 15 Q So if he came to you even today in November of 2016 16 and asked you, "You now know a lot more than you did 17 in 2012. Do I have an obligation to submit this book 18 for a pre-publication review," you could not tell him? 19 MR. FURMAN: Objection. 20 A I mean, you're asking me to speculate; but also, 21 benefiting from the experience, I would say to him, 22 "You'd be crazy not to, considering what you've gone 23 through here." 24 So, I mean, whether he had an obligation, maybe 25 in his mind under 312 he does have a question about</p>	<p style="text-align: right;">101</p> <p>1 an obligation or not? 2 MR. FURMAN: Objection to the form of the 3 question. 4 A Once again, you're asking me to answer a hypothetical 5 and give an opinion on it; and once again, the opinion 6 is the Government is the only entity that can decide 7 truly whether he is required to submit it. And I'm 8 not saying the Government even agrees with me and my 9 interpretation that 312 is discretionary. I think the 10 Government's position is that it's not discretionary, 11 at least with regard to this matter. You know, 12 there's a lot of things that would come into play. 13 So to answer your question, I think it would take 14 more time and more study and analysis and a 15 determination about what is in the public domain and 16 what is not and what the ramifications of that are and 17 what they are not. The sensitivity of the mission now 18 compared to 11, 12 months after it was executed is a 19 big discriminating factor as well, and I would submit 20 to you that any assets that were in place at the time 21 the book was originally released are long gone from 22 there. 23 It's a very long-winded answer, I understand and 24 I apologize, but it's not a simple question to ask 25 But, you know, the determination ultimately is the</p>
<p style="text-align: right;">100</p> <p>1 whether it should be submitted; and then, therefore, 2 he would have an obligation. There's been no DD Form 3 1847. Just for further clarification, a Standard Form 4 312 does not have -- it's not mission specific. It's 5 a general form that you sign, and it's a big umbrella, 6 whereas the 1847-1 is a specific -- mission specific 7 form that you sign. And that's why I'm saying he may 8 have an obligation under 312. Knowing what he knows 9 now, I think he'd be foolish not to. 10 Q And let me be real clear here. I'm not interested 11 in -- and my question probably wasn't clear in this 12 regard. I'm not interested in, "Well, what's the best 13 thing to do, knowing the load of crap you've had to go 14 through for two years," because clearly he could have 15 avoided that by submission. 16 My question is limited to a legal obligation. 17 Let's assume he does not want to if he does not have 18 to; he will if he has to. Could you tell him today 19 whether he has to or not, based upon what you now 20 know? 21 MR. FURMAN: Objection to the form of the 22 question. 23 Q And I understand you might not be able to give him an 24 answer either way because there may be things you 25 don't know. Could you tell him today whether he has</p>	<p style="text-align: right;">102</p> <p>1 client's. The recommendation that I would make in 2 this regard is the safest course is always submit. 3 Q God, there was one question I was going to ask and 4 then take a lunch break. 5 A You were going to ask me what I wanted for lunch. 6 Q Probably. And I'll buy the lunch. Let's just break 7 for lunch and I'll remember it. It was kind of a 8 wrap-up-and-forget-about-it question, and I'm not 9 going to be able to wrap up and forget until I 10 remember. So let's break for lunch. 11 MR. FURMAN: Sure. 12 (Lunch recess) 13 (Exhibit 39 14 presented to the witness.) 15 BY MR. JOHNSTON: 16 Q Mr. Podlaski, I have placed a new deposition Exhibit 17 No. 39 in front of you, and let me explain it. You 18 will recall the prior exhibit I put in front of you 19 that was your Memorandum of Record that had two pages, 20 and then there was a third page that seemed to -- that 21 was not present -- I'm sorry -- there was a third page 22 that seemed to be another version of the Memorandum of 23 Record, but it suggested there was a second page to 24 that other version and it was not attached. Okay. I 25 have found and printed out and marked as Exhibit 39</p>

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<p style="text-align: right;">103</p> <p>1 the entire document, just so we will have it, and you</p> <p>2 can see there was a second page that contains two</p> <p>3 additional sentences -- or two additional lines, I</p> <p>4 will say, but the last sentence in that version of the</p> <p>5 Memorandum of Record, which has Bates stamp 340, says</p> <p>6 "And with my recommendation Mark decided not to send</p> <p>7 the manuscript to USSOCOM PROSPR."</p> <p>8 Those are your words, correct?</p> <p>9 A You're talking about KP00341?</p> <p>10 Q Yes, sir.</p> <p>11 A Yes.</p> <p>12 Q Okay. Let me ask you -- I remembered the one question</p> <p>13 I was going to ask earlier when we were talking about</p> <p>14 what advice you would give Mr. Podlaski if he came to</p> <p>15 you today --</p> <p>16 MR. FURMAN: Mr. Bissonnette.</p> <p>17 MR. JOHNSTON: Thank you. I will probably do</p> <p>18 that more than once. That's my first time today, so</p> <p>19 I'm way ahead of my normal batting average.</p> <p>20 Q We were talking about what advice you would give</p> <p>21 Mr. Bissonnette today based upon things that you have</p> <p>22 learned since 2012. My question to you now is</p> <p>23 somewhat related to that but different. Do you, as</p> <p>24 you sit here today, criticize the settlement that</p> <p>25 Mr. Bissonnette made with the Government as being</p>	<p style="text-align: right;">105</p> <p>1 Q Okay. Let me ask you, what do the initials "SCI"</p> <p>2 stand for?</p> <p>3 A Sensitive Compartmented Information.</p> <p>4 Q And what do the initials "SAP" stand for?</p> <p>5 A Special Access Program. It depends on the context, of</p> <p>6 course; but within what we're talking about here,</p> <p>7 that's what I believe they mean.</p> <p>8 Q And for purposes of the jury that may hear this case</p> <p>9 who doesn't have the facile handling of these terms</p> <p>10 that you do, is there a difference between those two</p> <p>11 terms? Do they relate to each other in some fashion?</p> <p>12 A To the extent of my knowledge, I think that generally</p> <p>13 people who deal with classified information as a</p> <p>14 profession, they might know of a distinction; but in</p> <p>15 terminology that we've used and that we've ascribed, I</p> <p>16 would say that there's not a difference between --</p> <p>17 well, the only difference would be this, that SCI is a</p> <p>18 form of a Special Access Program.</p> <p>19 Q Okay. You were aware that following the receipt of</p> <p>20 the Jeh Johnson letter, the decision was made to</p> <p>21 release the book earlier than its original release</p> <p>22 date, correct?</p> <p>23 A Yes.</p> <p>24 Q Were you in agreement with that decision?</p> <p>25 A I'm trying to think. That's why I'm pausing.</p>
<p style="text-align: right;">104</p> <p>1 unreasonable?</p> <p>2 MR. FURMAN: Objection.</p> <p>3 You can answer.</p> <p>4 A My opinion is that it's unclear why Mr. Bissonnette</p> <p>5 settled with the Government and agreed to forfeit his</p> <p>6 royalties, especially in light of his testimony</p> <p>7 yesterday where he claimed that it was not an SAP</p> <p>8 and -- at least in the beginning of his testimony, and</p> <p>9 then at the end of his testimony asserted that the</p> <p>10 2007 document 1847-1 applied to Operation Neptune</p> <p>11 Spear. If you just look at the facts, the only</p> <p>12 document that they produced -- "they" being the</p> <p>13 Government produced that was relevant is the Standard</p> <p>14 Form 312, which is an umbrella document that does not</p> <p>15 have -- it's not mission specific, whereas the</p> <p>16 1847-1's are, then I think it's unreasonable for him</p> <p>17 to have agreed to forfeit all of his royalties when</p> <p>18 the Government has not produced any document that ties</p> <p>19 his signing of 1847-1 with Operation Neptune Spear.</p> <p>20 They could have gotten an affidavit from one of the</p> <p>21 briefers if they contend that it was a Special Access</p> <p>22 Program, and then that would have -- if not</p> <p>23 conclusive, that would have certainly been persuasive.</p> <p>24 So in light of the facts that are on the table, I</p> <p>25 believe that it is unreasonable.</p>	<p style="text-align: right;">106</p> <p>1 I don't think I necessarily opposed it, but I</p> <p>2 think I kind of felt like punched in the nose by</p> <p>3 Mr. Luskin, so I was really kind of taking a back seat</p> <p>4 at that point, unless I was directly asked a question.</p> <p>5 And I don't think anybody directly asked me about</p> <p>6 moving up the date, that I recall. And, you know, the</p> <p>7 reality is that if the Government wanted to, the</p> <p>8 Government could have issued a TRO or at least applied</p> <p>9 for a TRO rather, and the Government could have, you</p> <p>10 know, purchased all the books, like they've done in</p> <p>11 previous circumstances, if they didn't want the book</p> <p>12 released in its current form. You know, if -- I don't</p> <p>13 think it was going to be an end run of the</p> <p>14 Government's moving for a TRO if that's what they</p> <p>15 wanted to do.</p> <p>16 So to answer your question directly, I don't</p> <p>17 recall whether I consented to that, but I can -- I'm</p> <p>18 pretty sure that I did not say -- I did not lead the</p> <p>19 charge on it, I will say.</p> <p>20 Q Are you -- do you recall that on or about August 23rd,</p> <p>21 Dutton sent out a press release announcing the pending</p> <p>22 publication of the book?</p> <p>23 A I believe so.</p> <p>24 Q Did you see that press release before it went out, and</p> <p>25 approve it?</p>

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<p style="text-align: right;">107</p> <p>1 A I don't recall. I recall something about the press 2 release coming out. I think -- yeah, I think I did 3 review it. 4 Q Did you approve it or have an objection to it in any 5 fashion? 6 A I think I might have made a suggestion about some 7 language on it, but as I sit here, I really don't 8 remember the details. 9 Q Okay. Yesterday Mr. Bissonnette was asked about a 10 reference to drones and power outages that are 11 described in some fashion in Mark Bowden's book. Do 12 you recall him being questioned about that generally? 13 A I recall him being questioned about that. 14 Q He indicated -- well, he didn't indicate a hesitancy. 15 He refused to talk about that. If I asked you about 16 drones and power outages, would you likewise refuse to 17 talk about that? 18 A I would have nothing to say because I know nothing 19 about it. 20 Q All right. That did shorten those questions. 21 I want to go -- well, let me see if I've got 22 other things to cover here before we jump too deep 23 into the documents. 24 Do you recall when you first received kind of a 25 warning that the Government thought the release of the</p>	<p style="text-align: right;">109</p> <p>1 provide you with direction about what to do with 2 what's on your computer or what's in your trash bin. 3 So, you know, I didn't believe that there was much in 4 the book that was of concern, except as we've 5 previously discussed. 6 So to answer your question directly, no, I wasn't 7 concerned at that time. 8 Q Based upon your public -- based upon your knowledge of 9 public information about the bin Laden raid and the 10 involvement of the CIA, why do you believe that it -- 11 why do you not believe that it was a Special Access 12 Program? 13 A Well, first off, I don't know what your understanding 14 is of the CIA's involvement, nor do I know what my 15 understanding is. And as far as public information 16 goes, if you've read Nick Schmidle's New Yorker 17 article, it's a lot more detailed and descriptive than 18 Mr. Bissonnette's book. 19 So that decision is the Government's decision. 20 And about whether it came from a Special Access 21 Program, all I can tell you is all we know is what the 22 facts that are on the table. The Government has not 23 produced a Special Access Program -- any document, 24 including an 1847-1 -- signed by Mr. Bissonnette in 25 connection with Operation Neptune Spear, that I'm</p>
<p style="text-align: right;">108</p> <p>1 book would be illegal or in violation of 2 Mr. Bissonnette's obligations? 3 A I recall when the advanced copies were put out -- and 4 I think this is where Mr. Bissonnette was confused on 5 the matter. When the advanced copies were put out, 6 there was some backblow from -- or backlash from -- 7 initially from USSOCOM I recall, and that was when 8 they first got the book and the title -- everybody 9 was -- I think Matt Bissonnette called the "three-foot 10 hover" and people were excited and upset. But then 11 subsequently I recall Kevin Maurer, who had a 12 relationship with Colonel Nye, I think is the guy's 13 name, was from USSOCOM, and there was some 14 communication. And after they read it, they were 15 like, "Okay, fine, but you should have submitted it to 16 us." 17 Q Did you seek permission from any Governmental agency 18 to review the manuscript yourself? 19 A No. 20 Q Given your understanding of SF 312, do you believe 21 that it was lawful for Mr. Bissonnette to provide you 22 a copy of his raw manuscript for review? 23 A Well, this kind of goes back to earlier where we were 24 talking about and somebody -- if the Government 25 determines that it is classified and they usually</p>	<p style="text-align: right;">110</p> <p>1 aware of. 2 Q And what I'm trying to focus on is, in the absence of 3 the Government producing such a document, the primary 4 fact on which you rely in connection with your belief 5 that it was not a Special Access Program. 6 A That and Mr. Bissonnette's words to me and his own 7 testimony is that he did not recall receiving any 8 briefing that anyone said this was a Special Access 9 Program or that this was Sensitive Compartmented 10 Information. 11 So, like I said, if you just deal with the facts, 12 I haven't seen facts to convince me that it was a 13 Special Access Program. But I don't know what I don't 14 know. 15 Q Okay. Would you agree with me that when the Jeh 16 Johnson letter arrived on the evening of August 30 -- 17 and I guess we don't have the facsimile transmission, 18 but my memory is that it was after normal office hours 19 on that Thursday evening -- that as of the moment 20 Mr. Luskin was hired, you had had more time to 21 consider and wrestle with the problems of the 22 Government objecting to the release of the book than 23 he had had? 24 And by the way, I just found on the second page 25 of Exhibit 1 what appears to be, I guess, a facsimile</p>

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<p style="text-align: right;">111</p> <p>1 transmission August 30, 2012, 19:25. So I'm assuming</p> <p>2 it was 7:25 in the evening when it was transmitted.</p> <p>3 A Right. I didn't get it at that time. Apparently that</p> <p>4 went to the publisher first.</p> <p>5 Q That's my understanding.</p> <p>6 A And was filtered out and distributed.</p> <p>7 To answer your question, I think what you're</p> <p>8 asking me --</p> <p>9 MR. FURMAN: Hold on. Can we have the question</p> <p>10 read back?</p> <p>11 (Court Reporter read back.)</p> <p>12 A If you're asking me if I was -- I spent more time on</p> <p>13 the manuscript than Mr. Luskin, then the answer is</p> <p>14 yes.</p> <p>15 Q Well, isn't it true that around August 23, when the</p> <p>16 press release went out and apparently some advance</p> <p>17 copies of the book, almost immediately you all were</p> <p>18 put on notice that the Government was claiming there</p> <p>19 were violations by Mr. Bissonnette?</p> <p>20 A I would say that, yeah, we were aware that there was</p> <p>21 some parts of the Government, some agencies of the</p> <p>22 Government that had received the book, thought it</p> <p>23 violated the Non-Disclosure Agreement.</p> <p>24 Q And let me show you Exhibit 2. We were talking about</p> <p>25 when you received Exhibit 1. Exhibit 2 appears to be</p>	<p style="text-align: right;">113</p> <p>1 "Apparently I signed an SAP," right?</p> <p>2 A Yeah, but he doesn't necessarily -- well, he says, "I</p> <p>3 signed an SAP and I honestly don't remember signing</p> <p>4 it."</p> <p>5 MR. FURMAN: Yeah. I just want the record to be</p> <p>6 clear that what Mr. Bissonnette wrote was, "Apparently</p> <p>7 I did sign some sort of SAP program documents." It</p> <p>8 doesn't say that he signed some SAP. An SEI would be</p> <p>9 an SAP program document. So I think that's the</p> <p>10 shorthand, and there's some confusion over acronyms,</p> <p>11 and I just wanted to make that clear.</p> <p>12 A And moreover, he says he linked it to the one in 2007.</p> <p>13 He says, "I don't remember signing anything in 2007."</p> <p>14 Q Well, is the 2007 document an SAP document?</p> <p>15 A I think it's an 1847-1. And I don't have it in front</p> <p>16 of me right now.</p> <p>17 Q Yes, you do (indicating).</p> <p>18 A Okay. Great. And your question again is is this an</p> <p>19 SAP document?</p> <p>20 Q Right.</p> <p>21 A Well, I believe that this is a document saying that</p> <p>22 this signer agrees that they're receiving Sensitive</p> <p>23 Compartmented Information, and Sensitive Compartmented</p> <p>24 Information are under the umbrella of Special Access</p> <p>25 Programs.</p>
<p style="text-align: right;">112</p> <p>1 an email to you from Mr. Owen about midnight of that</p> <p>2 same day, alerting you to the receipt of it, correct?</p> <p>3 A That was an email from Mark Owen to Ben Sevier. I was</p> <p>4 copied on it. And then it looks like an admission --</p> <p>5 in the first sentence there, Mark says, "It looks like</p> <p>6 the docs there" -- "apparently I did sign some form of</p> <p>7 SAP docs." But like I said, the document didn't</p> <p>8 link -- the 1847-1 from 2007 didn't link it to</p> <p>9 Operation Neptune Spear.</p> <p>10 Q Right. My point is simply you knew about the Jeh</p> <p>11 Johnson letter very quickly, didn't you?</p> <p>12 A Yeah. I mean, I can pretty much assure you that I was</p> <p>13 in bed by that time, so I didn't read it until the</p> <p>14 next morning.</p> <p>15 Q Okay. So it would be fair to assume that by the next</p> <p>16 morning, August 31, you would have known about the Jeh</p> <p>17 Johnson letter?</p> <p>18 A Yes.</p> <p>19 Q Okay. And is it also fair to say in connection with</p> <p>20 Exhibit 2 that that document confirms that even when</p> <p>21 shown documents he signed, Mr. Bissonnette doesn't</p> <p>22 really understand them?</p> <p>23 MR. FURMAN: Objection as to what -- objection.</p> <p>24 A Yeah, you're asking me to speculate on this.</p> <p>25 Q Let me be more specific. He described -- he says,</p>	<p style="text-align: right;">114</p> <p>1 Q Do you agree with me that Mr. Bissonnette's statement</p> <p>2 in his email on Exhibit 2 is that he signed some sort</p> <p>3 of SAP program docs, based upon what you know?</p> <p>4 A I agree that the document you just showed me indicates</p> <p>5 his signature on a document from 2007, yes.</p> <p>6 Q Is that some sort of SAP program doc?</p> <p>7 A Yeah, I believe an SCI is under the SAP or Special</p> <p>8 Access Program umbrella; so yes.</p> <p>9 (Exhibit 40</p> <p>10 marked for identification.)</p> <p>11 Q Mr. Podlaski, let me direct your attention to what's</p> <p>12 marked as Exhibit 40 with Bates number 1705. It is an</p> <p>13 email from Kevin Podlaski to Kevin Podlaski. Do you</p> <p>14 know why you would have sent yourself a document?</p> <p>15 A Yeah. I sometimes do that just to make sure that I</p> <p>16 remember and don't get distracted by other business,</p> <p>17 that it's on my current agenda.</p> <p>18 Q Sure.</p> <p>19 A So I email myself sometimes.</p> <p>20 Q Okay. And in this particular instance, it says,</p> <p>21 "Revision to paragraph 47."</p> <p>22 Do you believe that to be Paragraph 47 of the</p> <p>23 Dutton contract, or is that some other Paragraph 47?</p> <p>24 A As I sit here, I really don't know, because I don't</p> <p>25 remember.</p>

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<p style="text-align: right;">115</p> <p>1 Q Okay. And then what you wrote in the email to 2 yourself for a reminder was, "Although the author has 3 the legal right to tell the story described in the 4 subject matter description above," comma, "he has 5 previously signed one or more agreements with the US 6 Government not to disclose and/or write about 7 classified or classifiable information." 8 On January 18, when you sent that email to 9 yourself, did you believe that to be a true statement? 10 A I have no idea what I would -- what I remember is 11 these were probably just my notes to myself for things 12 to further analyze or review. 13 Q So you don't know if what you wrote to yourself as a 14 revision to Paragraph 47 is a statement you believed 15 at the time or not? 16 A Yeah, no. No, I'm not going to say that. I think 17 it's just a draft of wording, trying to effectuate 18 something that either I thought about or the client 19 wanted, and I can't recall as I sit here. 20 Q And then the second sentence says, "The author has no 21 legal obligation to submit the manuscript for review 22 or approval by any agency of the US Government." 23 On January 18 when you included that sentence in 24 the email to yourself, did you believe that to be a 25 true statement?</p>	<p style="text-align: right;">117</p> <p>1 THE WITNESS: Yeah, I answered the question. 2 MR. FURMAN: Okay. 3 (Exhibit 41 4 marked for identification.) 5 Q Mr. Podlaski, I've handed what's marked as Exhibit 41, 6 which is an email chain which includes portions of 7 Exhibit 38, and that's not the part I want to direct 8 your attention to. 9 On the first page of the document, there is an 10 email from you to Elyse. The first sentence of the 11 paragraph says, "Please don't take offense to this 12 question, however, I was wondering if Mark's story and 13 Mark have been vetted yet." 14 Do you remember initiating that inquiry to 15 Ms. Cheney? 16 A Yes. 17 Q And there's no date on this email from you, but the 18 reply from her above is dated January 21. Does that 19 sound like about the time you would have made that 20 inquiry to her? 21 A On or before that, yes. 22 Q Okay. And then the second paragraph, it says, "It 23 occurs to me that I have been caught up in the 24 excitement" -- with "excitement" in quotes -- "of 25 being among the first to know the inside story that I</p>
<p style="text-align: right;">116</p> <p>1 A Yeah, based on what Mr. Bissonnette had provided to me 2 in the way of information. 3 Q Did you produce these notes as a part of the 4 Bissonnette file in the first production? 5 A I have no idea. 6 Q Was it a part of your hard copy of the file that was 7 produced? 8 A Probably not; but I don't know. 9 MR. FURMAN: I have, off the record, a quick 10 housekeeping question. 11 MR. JOHNSTON: Sure. 12 (Discussion held off the record.) 13 Q I'm hoping I don't have to go through these emails, so 14 let me ask just kind of a global question and see if 15 you remember. 16 Do you remember consulting with Mr. Bissonnette, 17 through Ms. Cheney sometimes, about hiding his 18 identity through the formation of LLC's? 19 A I do. 20 Q Okay. And you gave him advice in connection with 21 that? 22 A I did. 23 Q Okay. 24 MR. FURMAN: Is there something you wanted to add 25 to that in response to the question?</p>	<p style="text-align: right;">118</p> <p>1 have failed to question let alone validate Mark's 2 training, background, and credentials." 3 Is that an accurate statement of your state of 4 mind about this engagement as of the date you sent 5 that email? 6 MR. FURMAN: Objection. 7 You can answer. 8 A It says what it says. My use of the word "excitement" 9 was just, you know, still very noteworthy event that 10 had occurred within the year. 11 (Exhibit 42 12 marked for identification.) 13 Q Mr. Podlaski, I've handed you Exhibit 42, and again, 14 it is an email string involving some emails that I 15 believe you were not copied on but they are in this 16 email forwarded to you. I really want to direct your 17 attention only to the very top of the document. It's 18 dated February 6th, 2012 from Ms. Cheney to you. And 19 then in the -- towards the end of that document she 20 says, "I'm going to go in and talk to the general 21 counsel, with the other lawyer - Rich Heller - at my 22 side because Heller has a pre-existing relationship 23 with the Penguin's general counsel." 24 I bring that up to see if that refreshes your 25 recollection any further about the fact that Matt had</p>

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<p style="text-align: right;">119</p> <p>1 more than one lawyer representing him during the</p> <p>2 writing process of the book.</p> <p>3 A No.</p> <p>4 Q So do you remember receiving this at all?</p> <p>5 A No.</p> <p>6 Q Okay.</p> <p>7 (Exhibit 43</p> <p>8 marked for identification.)</p> <p>9 Q I've handed you what is now marked as Exhibit 43,</p> <p>10 which is a series of emails between you and</p> <p>11 Ms. Cheney. Do you remember this exchange of emails?</p> <p>12 A I'll have to take a look at it.</p> <p>13 (Pause)</p> <p>14 A Okay. Sorry. I've read it now.</p> <p>15 Q Do you recall these communications?</p> <p>16 A You know, I recall generally these -- the topics, but</p> <p>17 I don't remember the exact wording that I used here.</p> <p>18 I mean -- but I recall generally these matters.</p> <p>19 Q Okay. Let me direct your attention to the first page</p> <p>20 of this string of emails. At the bottom is an email</p> <p>21 from you to Ms. Cheney, dated February 6; do you see</p> <p>22 that?</p> <p>23 A Yes, the very bottom.</p> <p>24 MR. FURMAN: Where are we talking about?</p> <p>25 MR. JOHNSTON: The bottom of the first page.</p>	<p style="text-align: right;">121</p> <p>1 Q Do you believe it today?</p> <p>2 A I don't know what I believe today. I don't know.</p> <p>3 Q Then at the very top Ms. Cheney replies to you and,</p> <p>4 kind of, in the email of her paragraph says, "If you</p> <p>5 are saying, as below, that it is okay and that Mark is</p> <p>6 not exposing himself unnecessarily by showing it</p> <p>7 simultaneously, then I would like to eliminate the</p> <p>8 last line."</p> <p>9 Did you ever reply to that and say, "Yes, it is</p> <p>10 okay" or "No, it's not okay"?</p> <p>11 A I honestly don't recall.</p> <p>12 Q All right.</p> <p>13 (Exhibit 44</p> <p>14 marked for identification.)</p> <p>15 Q Exhibit 44. And you'll notice these are not in</p> <p>16 chronological order. I apologize, but I don't want</p> <p>17 you to assume they are.</p> <p>18 This is a January 16 email to you from Ms. Cheney</p> <p>19 where she says, "Dear Kevin, Below are my comments.</p> <p>20 Looking forward to hearing yours. Best Elyse."</p> <p>21 And then under Description, "Reads fine to the</p> <p>22 author right now; but we thought we might add language</p> <p>23 that conforms with the language of his enlisted</p> <p>24 agreements saying that he will do this without</p> <p>25 revealing" then in parens, "(whatever the specific</p>
<p style="text-align: right;">120</p> <p>1 THE WITNESS: There's a 4:00 and a 4:17.</p> <p>2 MR. JOHNSTON: I'm sorry. The one from Ms.</p> <p>3 Cheney to you.</p> <p>4 MR. FURMAN: At 4:17 p.m.?</p> <p>5 MR. JOHNSTON: Yes, yes. And then in that</p> <p>6 paragraph, if you look down in the middle on the</p> <p>7 left-hand margin, just start with the word "HOWEVER"</p> <p>8 in capital letters. She says, "HOWEVER, the problem</p> <p>9 with that is -- does the fact that an editor has read</p> <p>10 the manuscript expose Mark legally on the very slim</p> <p>11 chance that he somehow revealed govt secrets? You see</p> <p>12 the problem" -- based upon the book is on a fast</p> <p>13 track, et cetera.</p> <p>14 Do you recall her asking you that question?</p> <p>15 A I don't recall the question, but, you know,</p> <p>16 obviously if this is what it purports to be, then I</p> <p>17 answered it.</p> <p>18 Q So above that is your answer where you say, "I'm not</p> <p>19 so concerned about Mark releasing classified</p> <p>20 information to the publisher. Mark and I previously</p> <p>21 discussed this. I am confident that he has been a</p> <p>22 Special Operator long enough to know at least 75 to 80</p> <p>23 percent of what is not releasable."</p> <p>24 Did you believe that when you wrote that to her?</p> <p>25 A Sure, I guess.</p>	<p style="text-align: right;">122</p> <p>1 language is)," closed parens, and then she puts in</p> <p>2 quotes "tactics, techniques, or procedures."</p> <p>3 Do you remember her suggesting comments about</p> <p>4 making it clear he would not be revealing tactics,</p> <p>5 techniques, or procedures?</p> <p>6 A I don't have any independent memory of this.</p> <p>7 Q Is tactics, techniques, or procedures often referred</p> <p>8 to as the shorthand of TTP?</p> <p>9 A Yeah, I've heard that before.</p> <p>10 Q Do you believe that in the book "No Easy Day" as</p> <p>11 published, Mr. Bissonnette inappropriately reveals</p> <p>12 TTP?</p> <p>13 A Not that I'm aware of.</p> <p>14 Q If he -- if you had seen anything in the book -- if</p> <p>15 you during your vetting and review of the book had</p> <p>16 seen anything that you thought was TTP, what would you</p> <p>17 have done?</p> <p>18 MR. FURMAN: Objection.</p> <p>19 A You're asking me to speculate. I would have brought</p> <p>20 it to his attention and had him make a decision as to</p> <p>21 whether he wanted to include it or not.</p> <p>22 Q Would you have been any more active than that in</p> <p>23 assuring that this retired Navy SEAL did not reveal</p> <p>24 tactics, techniques, or procedures?</p> <p>25 MR. FURMAN: Objection.</p>

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<p style="text-align: right;">123</p> <p>1 A We -- yeah --</p> <p>2 Q Hypothetically.</p> <p>3 A You're asking me a hypothetical question. First of</p> <p>4 all, are we talking about Matt Bissonnette? Because</p> <p>5 you said retired SEAL. He's not retired, was he?</p> <p>6 Q I don't know what "retired SEAL" means, so let me just</p> <p>7 use his name. One of the things that you did when you</p> <p>8 reviewed the book was search for anything that you</p> <p>9 thought was TTP.</p> <p>10 A Correct.</p> <p>11 Q Because you knew that he was not to reveal TTP?</p> <p>12 A Correct.</p> <p>13 Q And as a former JAG Officer who served this country</p> <p>14 long and well and someone who cares about this country</p> <p>15 and other men serving today, you would not have</p> <p>16 allowed him to reveal TTP, except over your strenuous</p> <p>17 objection, correct?</p> <p>18 A Well, as I said, we would discuss it; and as a matter</p> <p>19 of fact, without saying specifically what it is, we</p> <p>20 did have a discussion about certain items in there,</p> <p>21 and he decided to include it in there. So --</p> <p>22 Q As you sit here today, do you -- I probably asked</p> <p>23 this. Do you believe there are TTP revealed in the</p> <p>24 book?</p> <p>25 A Not that I am aware of which would compromise national</p>	<p style="text-align: right;">125</p> <p>1 Q Did he receive and review it simultaneously with you?</p> <p>2 A I don't know.</p> <p>3 Q Did you ever express any concern to Mr. Bissonnette</p> <p>4 that he should not review it until you had vetted it?</p> <p>5 MR. FURMAN: I think -- could we have the</p> <p>6 question read back?</p> <p>7 MR. JOHNSTON: Did I misspeak?</p> <p>8 MR. FURMAN: Or maybe I misheard.</p> <p>9 Q Let me just try again.</p> <p>10 Did you ever indicate to Mr. Bissonnette that</p> <p>11 Mr. Sevier should not review the manuscript until</p> <p>12 after you had vetted it?</p> <p>13 A My recollection is that I suggested that I review it</p> <p>14 before the editor review it in an effort to do a</p> <p>15 cleanse -- cleansing review and try to remove anything</p> <p>16 that would be considered classified or classifiable.</p> <p>17 And I don't really recall whether I got voted down</p> <p>18 or -- because that email that you showed me previously</p> <p>19 from Elyse Cheney seems to indicate that they wanted</p> <p>20 to do it simultaneously. So, you know --</p> <p>21 Q Do you recall objecting to that?</p> <p>22 A Well, like I said, I expressed to them that I believed</p> <p>23 that I should review it first so that we could have a</p> <p>24 chance to go back and forth; and, of course, when</p> <p>25 you're dealing with information that's potentially</p>
<p style="text-align: right;">124</p> <p>1 security.</p> <p>2 Q Thank you.</p> <p>3 (Exhibit 45</p> <p>4 marked for identification.)</p> <p>5 Q Mr. Podlaski, I've handed you Exhibit 45, which is an</p> <p>6 email from Ben Sevier to you with a copy to Alex at</p> <p>7 Elyse Cheney's office and a copy to Ms. Cheney, dated</p> <p>8 Saturday, June 23rd, Attachments: NO EASY DAY</p> <p>9 complete third draft with edits June 23.doc.</p> <p>10 Do you remember receiving this document and the</p> <p>11 Attachment?</p> <p>12 A I don't have an independent recollection of receiving</p> <p>13 this, but I have no reason to deny that I did receive</p> <p>14 the final draft.</p> <p>15 Q Was this the transmittal of the draft -- the first</p> <p>16 transmittal of the draft to you for you to do your</p> <p>17 vetting?</p> <p>18 A Huh-uh. This is the third and final draft. I think</p> <p>19 this is after I had added the footnotes, and then we</p> <p>20 went around and they took those out and changed them</p> <p>21 to endnotes, and then I think that this is just the</p> <p>22 reference-cited one.</p> <p>23 Q Okay. Did Ben Sevier receive and/or review the</p> <p>24 manuscript before you did?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">126</p> <p>1 classified, you want to have as minimal amount of</p> <p>2 people review it as possible.</p> <p>3 Q Sure.</p> <p>4 A As I sit here today, I don't recall -- I don't think</p> <p>5 it was a big point of contention. I think they either</p> <p>6 did it or they didn't do it. I forget.</p> <p>7 Q Is there -- let me go ahead and hand that to you.</p> <p>8 (Pause)</p> <p>9 Q Before you get lost in it, is there any document that</p> <p>10 you know of where you expressed to them reservations</p> <p>11 about Mr. Sevier looking at the document before you</p> <p>12 had vetted it?</p> <p>13 A I don't know -- wait. I'm sorry. I got distracted.</p> <p>14 Ask the question again.</p> <p>15 Q Do you know of any document where you expressed to</p> <p>16 them any reservation about Mr. Sevier reviewing the</p> <p>17 manuscript before you had vetted it?</p> <p>18 MR. FURMAN: And "them" -- we have the same</p> <p>19 question. Who is "them"?</p> <p>20 Q "Them" is Matt, Elyse, Sevier, anybody?</p> <p>21 A Yeah, I don't know -- I think there must be something</p> <p>22 in writing. We talked about me reviewing it first,</p> <p>23 and you saw Elyse's email kind of capturing some of</p> <p>24 that. She was saying she didn't think they'd go for</p> <p>25 it. I believe that's what I just recall reading,</p>

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<p style="text-align: right;">127</p> <p>1 because they wanted, you know, to fast track it, et 2 cetera. So I don't really remember what the ultimate 3 spillout of the thing was. 4 Q Do you know of any document other than the ones that 5 we looked at that discuss that subject? 6 A If there is any other document, it would be part of 7 the email exchange, and there's nothing other -- 8 anything independent of that. 9 (Exhibit 46 10 marked for identification.) 11 Q Okay. Do you have in front of you Exhibit 46? 12 A Yes. 13 Q This appears to be an email from Krista Witmer to you, 14 dated June 22, with the subject of "Mark Owens 15 beginning of book". Who is Krista Witmer? 16 A She was my secretary. I dictated it. She typed it up 17 and sent it to me. 18 Q Okay. So you would have dictated this and this is 19 simply sending back to you what you had dictated? 20 A That's correct. 21 Q Okay. 22 A She doesn't work at Carson Boxberger anymore. I don't 23 even know where she is. 24 Q So she didn't follow you to your new firm? 25 A No, she did not.</p>	<p style="text-align: right;">129</p> <p>1 Q -- where he is thanking you for the quick turnaround. 2 And then below that is an email from you to the two of 3 them where you enclose suggested revisions and 4 alterations and changes to the manuscript that you 5 propose, and then you end that by saying, "I don't 6 think the story is diminished or compromised in any 7 manner by my suggested changes," correct? 8 A You're asking me if that's what I wrote? 9 Q Yes, those are your words? 10 A That appears to be what I wrote, yes. 11 Q And are the changes that we are talking about here a 12 part of your vetting process to ensure that classified 13 confidential information is not disclosed? 14 A Yeah, I don't know what -- I mean, this -- the Subject 15 is the third draft, so I think I had already -- well, 16 the first thing, this was like a crapload of 17 grammatical and punctuation errors -- which I was kind 18 of surprised that a ghost writer didn't fix, subject 19 for disagreements and all that, but I also did the 20 footnote work and all of that. So I think this was 21 after -- this is after even this -- yeah, this is 22 after this document (indicating) when they rejected 23 that as well. So this must have been on the -- this 24 might have been happy-to-glad word changes. 25 (Exhibit 48</p>
<p style="text-align: right;">128</p> <p>1 Q All right. Well, you've answered most of my 2 questions, but to be sure, these words are your words 3 then? 4 A Those are my words. I offered those to the publisher. 5 They did not want to do that. They wanted it to be -- 6 I think the word was used was -- I remember them 7 mentioning something about the "Lions of Kandahar," 8 which Kevin Maurer ghost wrote with a former SF 9 Officer, and he didn't have any kind of introduction 10 like that. So he just kind of did it like almost a 11 personal memoir, and that's what they wanted to go 12 with. So they said, "Thanks very much, no." 13 Q Did they use some of the substance of your comments 14 but not in your words? 15 A Now that you say that, I think they sent me a revised 16 one back. I made further changes to it, and I think 17 that they sent -- their final version was like nothing 18 at all like this. It was very, very simple, and they 19 thought they answered the mail on it, so -- 20 (Exhibit 47 21 presented to the witness.) 22 Q I've handed you Exhibit 47, which is a June 28 email 23 to you and to Ms. Cheney from Alex Jacob, who is in 24 Ms. Cheney's office -- 25 A Um-hum.</p>	<p style="text-align: right;">130</p> <p>1 presented to the witness.) 2 Q I've handed you Exhibit 47 which, again, is a 3 series -- should be 48. I misspoke. Thank you. 4 A Yeah, okay. 5 Q This one -- if we go back a little bit, this has some 6 of your issues and questions, correct? 7 A Yeah. Can you just give me a moment to read, please? 8 Q Sure. 9 (Pause) 10 A Okay. 11 Q So if we look at -- start at page 2105 going backwards 12 there's a series of your citations to the manuscript, 13 correct? 14 A Yeah, I don't know if those are mine or Kevin 15 Maurer's. Like I said earlier, I initially did 16 footnotes, and then there were some I couldn't find 17 citations for and forwarded them to -- and then Kevin 18 Maurer did some, so I didn't closely scrutinize these 19 to see if these are mine or his. 20 Q I don't know either, but I just know at the bottom of 21 page 105 it says "Lawyer Edits". 22 A Yeah, I don't know why that would be down there. 23 Well, because it's a Subject, and it looks like this 24 is kind of -- I don't know why that would be in the 25 middle of the page there, because that's the Subject.</p>

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<p style="text-align: right;">131</p> <p>1 Q Well, let's go up from page 2105, since the email 2 is -- 3 A Forward or backward? 4 Q The emails proceed, I think, to the front of the 5 document; so we'll start and go up. 6 A Oh, I see what you're saying. 7 Q The first one is Kevin Maurer to Ben where he says, 8 "Mark and I talked this morning and completed the 9 lawyer edits, including open source citations." And 10 then he says, "Mark and I are ready to discuss the 11 edits today." 12 A Yeah. 13 Q And then there is a -- 14 A Just for the record, I'm not on that discussion, 15 right? 16 Q Right, correct. This is just for background. 17 A Um-hum. 18 Q And then above that is Ben Sevier to Kevin, Elyse, 19 Mark, and Alex where he says, "I've just reviewed them 20 as well and I think the lawyer has made a significant 21 contribution here. I'm very happy to have his review. 22 Kevin and Mark and I will get all of his changes 23 incorporated today." 24 That's talking about your changes, correct? 25 A Right.</p>	<p style="text-align: right;">133</p> <p>1 A Independent memory, no. 2 Q Okay. And then above that, same day, just, I guess, 3 20 minutes later is you replying to Alex, saying, "I 4 have no problem at all with the changes proposed in 5 the Foreword. I agree with the reasoning for the 6 changes." Correct? 7 A Yeah. That's the first format, though, the first 8 change. Ultimately it was further changed. 9 Q And then you say, "Regarding open source citations: 10 They are not necessary to list as footnotes. End 11 Notes are fine." 12 A Yeah, I did say that. 13 Q And then third paragraph, you would like to review any 14 maps and then you say, "The military has several 15 regulations on photographs depending on who took the 16 photos." 17 A Um-hum. 18 Q And then you say, "Finally, may I please see the 19 'uncorrected proof' of the manuscript for a final once 20 over when you get to that stage?" 21 A Right. That's the galley copy I was talking about. 22 Q Okay. And then the next one above that is another 23 email from you to Alex and Ben, the same day but I 24 guess about three or four hours later, and you say, "I 25 think the pictures are legally okay except for the</p>
<p style="text-align: right;">132</p> <p>1 Q And then it says, "I have two questions for him. Is 2 it necessary to print open sources in the book or can 3 we simply address their existence in the foreword?" 4 And then 2, "I've made some edits to the proposed 5 foreword in the attached document and I would like to 6 know if they are acceptable to the lawyer and Mark." 7 A One thing we know for sure is Ben can't count. 8 Q Yeah, I'll give you that. 9 3, "Has he seen the maps that Mark and Travis 10 Rightmeyer prepared?" 11 And then his final paragraph, "Alex, maybe you 12 want to forward this to him. Maybe we don't need a 13 conference call; his work was excellent, so there's 14 really not that much to discuss, although I'm free all 15 afternoon." 16 And then the next email -- 17 A Gosh, I hope they're talking about me as the lawyer. 18 Q I can assure you they are. The next email up is Alex 19 doing what Ben suggested, forwarding that email to 20 you. "Kevin, the team is hard at work incorporating 21 the changes you suggested, thank you. Can you take a 22 look at Ben's questions below and also his slight 23 tweak to your foreword? Happy to set up a call if 24 that's easier." 25 Do you remember getting that email?</p>	<p style="text-align: right;">134</p> <p>1 NVG's." And for the benefit of the jury, the NVG's is 2 the night vision goggles? 3 A Correct. 4 Q And then you say, "This is out of my lane, but I'm not 5 sure you need all the maps. No legal issues with 6 them, it just occurs to me if you have 8 Maps, you 7 don't really need to read the book." 8 Then over on to the other page you continue to 9 say, "The maps and diagrams were created by a mapmaker 10 from" -- I'm sorry. That's Alex's email. So that was 11 all of your email. 12 And then one more above it. There is another 13 email from you the following day, June 29, with lawyer 14 edits as the issue, and you say, "Out of an abundance 15 of caution a question. I reached out but did not find 16 the type of NVG's that are displayed. I was wondering 17 whether they were military specification or not? If 18 they are military specification I would recommend -- I 19 would not recommend including a picture." 20 Do you remember focusing on the NVG's and making 21 that recommendation? 22 A Now I do. 23 Q And then at the top of the page, the last email that's 24 a part of this exhibit is Alex back to you where he 25 says, "Mark says they're simply panoramic night vision</p>

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<p style="text-align: right;">135</p> <p>1 goggles, not secret military technology, which are</p> <p>2 searchable on Google. They're also featured in Medal</p> <p>3 of Honor video games. If you think there are other</p> <p>4 outstanding issues, I think it might be fastest to</p> <p>5 communicate with Mark directly."</p> <p>6 Did that satisfy your concern about the night</p> <p>7 vision goggles?</p> <p>8 A No. Mark and I had a conversation.</p> <p>9 Q Okay. And --</p> <p>10 A In that conversation, he directed me to the website</p> <p>11 where they were commercially available, and so --</p> <p>12 Q Your memory is excellent on that. Let me show you</p> <p>13 Exhibit 49.</p> <p>14 (Exhibit 49</p> <p>15 presented to the witness.)</p> <p>16 A I know you're on a roll here, but I need to give you a</p> <p>17 warning. I need to go to the bathroom shortly.</p> <p>18 Q Let's finish this and you can do that.</p> <p>19 Exhibit 49 is an email from you to AB. Is that</p> <p>20 an acronym for Matt Bissonnette?</p> <p>21 A Where's this?</p> <p>22 Q At the very top of the page. From you to AB, Jacobs</p> <p>23 Alex?</p> <p>24 A I don't know. I believe that he might have used that,</p> <p>25 but I don't know for sure.</p>	<p style="text-align: right;">137</p> <p>1 capabilities are. Because it was saturated in public</p> <p>2 domain at that point, it was -- I think my</p> <p>3 recommendation was that it would be fine.</p> <p>4 Q So you didn't change your recommendation for what is</p> <p>5 reflected on Exhibit 49, the pictures are fine?</p> <p>6 A That's correct, yeah.</p> <p>7 Q And this telephone call you're talking about in June,</p> <p>8 this is another telephone call?</p> <p>9 A No, this is one of the two that I had with him after I</p> <p>10 got the manuscript.</p> <p>11 Q Okay.</p> <p>12 A I had one conversation with him and Kevin Maurer and</p> <p>13 then one just with him, that I recall.</p> <p>14 Q Let's take a break.</p> <p>15 (Recess)</p> <p>16 (Exhibit 50</p> <p>17 marked for identification.)</p> <p>18 BY MR. JOHNSTON:</p> <p>19 Q I've handed you Exhibit 50, and I want to direct your</p> <p>20 attention to the email at the bottom of the page</p> <p>21 numbered 2421, the email from Mr. Sevier to you. Do</p> <p>22 you see that?</p> <p>23 A Tuesday, July 3rd, the 2:59 p.m. one?</p> <p>24 Q Correct.</p> <p>25 A Okay. I see it.</p>
<p style="text-align: right;">136</p> <p>1 MR. FURMAN: That's not an acronym. I think</p> <p>2 that's the way that his -- Mr. Bissonnette's email</p> <p>3 address would appear.</p> <p>4 Q That's what I meant. My -- I simply meant if "AB" is</p> <p>5 there, do you agree with me that means it was sent to</p> <p>6 Mr. Bissonnette?</p> <p>7 A Yeah, if that's, in fact, him. And I believe -- I</p> <p>8 think it might be him. Then yes, it was sent to him.</p> <p>9 Q Okay. So starting at the bottom again and reading up,</p> <p>10 we have on June 29 at 5:00 p.m. Mr. Podlaski writing,</p> <p>11 "I was wondering whether the NVG's that you have are</p> <p>12 military specification?"</p> <p>13 And then -- that was at like 5:11. And at 5:32</p> <p>14 Mark Owen replies, "GPNVG's Gross panoramic NVG's.</p> <p>15 They ate all over the internet." I assume he means</p> <p>16 "they are all over the internet" -- "and video games.</p> <p>17 Been out for 7 years."</p> <p>18 And then the email at the top of the page is you</p> <p>19 back to him and Alex saying, "Okay. Then the pictures</p> <p>20 are fine."</p> <p>21 A Right, but we had a telephone discussion as well and</p> <p>22 talked about several things including the NVG's,</p> <p>23 because the issue was one of those confirmation of use</p> <p>24 of technology things, that you're using technology</p> <p>25 that's out there. It tells somebody what your</p>	<p style="text-align: right;">138</p> <p>1 Q It says, "Hi, Kevin. Mark and I, in consultation with</p> <p>2 Penguin's lawyer Alex Gigante, and my publisher Brian</p> <p>3 Tart, have put together the attached revision of the</p> <p>4 author's note -- you'll see that it folds in your</p> <p>5 stuff (streamlined by us and by Mark) into the</p> <p>6 Author's note that already existed. We want to start</p> <p>7 the book with Mark's voice, rather than with lawyerly</p> <p>8 language, just so the readers get the right tone from</p> <p>9 the opening paragraphs."</p> <p>10 Do you recall receiving that email or that</p> <p>11 communication from Mr. Sevier?</p> <p>12 A I do.</p> <p>13 Q And then you replied the same day about an hour and a</p> <p>14 half later or so, half hour -- no, 45 minutes later.</p> <p>15 You said, "I agree. Your solution is a smart call. I</p> <p>16 have no problem with the changes." Correct?</p> <p>17 A Yeah, that's what's written there.</p> <p>18 Q Now, let me hand you what's marked as Exhibit 51.</p> <p>19 (Exhibit 51</p> <p>20 marked for identification.)</p> <p>21 Q Exhibit 51's page 1 appears to be a handwritten cover</p> <p>22 page for a facsimile transmission. Is that what that</p> <p>23 is?</p> <p>24 A I can't disagree with you. I don't know.</p> <p>25 Q Okay. And then -- and it's from Ms. Cheney to you?</p>

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<p style="text-align: right;">139</p> <p>1 A That's what it appears to be.</p> <p>2 Q And it's dated August 15 of 2012, correct?</p> <p>3 A It's -- that's what the fax line appears to be.</p> <p>4 Q And then the second page appears to be the Dutton</p> <p>5 press release announcing the soon-to-be published "No</p> <p>6 Easy Day," correct?</p> <p>7 A That's what it says, yeah.</p> <p>8 Q And do you remember seeing this press release before</p> <p>9 it went out?</p> <p>10 A Vaguely, yeah.</p> <p>11 Q Did you have any objection to it?</p> <p>12 A I don't recall if I did.</p> <p>13 Q Let me show you what's marked as Exhibit 52.</p> <p>14 (Exhibit 52</p> <p>15 marked for identification.)</p> <p>16 Q It has on August 20 an email from you to Ms. Cheney,</p> <p>17 under the Subject: URGENT approval needed. And you</p> <p>18 say to her, "I like it."</p> <p>19 Do you know if that is talking about the press</p> <p>20 release?</p> <p>21 A As I sit here, I really honestly don't know. It seems</p> <p>22 to be -- well, I don't know.</p> <p>23 Q Let me show you Exhibit 53.</p> <p>24 (Exhibit 53</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">141</p> <p>1 Q This is where the -- would I be accurate in saying</p> <p>2 this is where the trouble started with the book?</p> <p>3 A I don't know if you'd be accurate in saying this. I</p> <p>4 mean, this is just one guy's opinion.</p> <p>5 Q I agree with that.</p> <p>6 A And he's a newspaper --</p> <p>7 Q No, I get it.</p> <p>8 A -- correspondent.</p> <p>9 Q Is this the first notice that anyone had -- whether</p> <p>10 reliable or not -- from a source that said the</p> <p>11 Government had problems with the book?</p> <p>12 A I don't know. I mean, I wasn't the pivot person for</p> <p>13 receiving and channeling responses. From what I</p> <p>14 recall, Kevin Maurer was kind of spearheading the</p> <p>15 release -- the advance copy placement and receiving of</p> <p>16 info on that -- on those books.</p> <p>17 Q The email from Ms. Cheney to you and others, to you</p> <p>18 and Ms. Ball and Mr. Ragone -- I'm not sure how --</p> <p>19 A Ragone, yeah.</p> <p>20 Q Okay. Her email says, "Can someone give this guy a</p> <p>21 statement of the truth? He had no obligation to show</p> <p>22 it to them."</p> <p>23 Do you know why Ms. Cheney was of the opinion</p> <p>24 that Mr. Bissonnette had no obligation to show the</p> <p>25 book to the Government for a pre-publication review.</p>
<p style="text-align: right;">140</p> <p>1 Q Let me just ask you this before we go to 53. Without</p> <p>2 regard to your memory of Exhibit 52, when you saw the</p> <p>3 press release that Dutton was proposing, did you like</p> <p>4 it?</p> <p>5 MR. FURMAN: Objection. Objection to the form of</p> <p>6 the question as to whether he liked it. Enough said.</p> <p>7 A You know, I don't recall what I thought at the time,</p> <p>8 but as I look at it, the thing I think I should have</p> <p>9 taken issue with is "and many previously unreported</p> <p>10 missions," but I don't -- taken out of context, it</p> <p>11 doesn't mean anything.</p> <p>12 Q Do you recall at the time that you reviewed it</p> <p>13 expressing any concerns or reservation about the press</p> <p>14 release?</p> <p>15 A No. As I said, I don't recall.</p> <p>16 Q Do you have Exhibit 53 in front of you?</p> <p>17 A Yes.</p> <p>18 Q Exhibit 53 is a series of emails. I will tell you you</p> <p>19 are included only on the very last one at the top of</p> <p>20 the first page.</p> <p>21 A Right.</p> <p>22 Q Do you remember this series of emails that began with</p> <p>23 Mr. Mark Hosenball from Thomson Reuters emailing with</p> <p>24 Ms. Cheney about Mr. Bissonnette and the book?</p> <p>25 A Yes, I recall. I recall generally, yes.</p>	<p style="text-align: right;">142</p> <p>1 A I don't know why Ms. Cheney did anything.</p> <p>2 Q Would it be true that the reason she had that belief</p> <p>3 is because that's what you had told her?</p> <p>4 A You're asking me to speculate. I don't know the</p> <p>5 answer to that question.</p> <p>6 Q Let me show you what's marked as Exhibit 54.</p> <p>7 (Exhibit 54</p> <p>8 marked for identification.)</p> <p>9 Q It is a continuation of that email chain, and there's</p> <p>10 three or four of these, because people would reply and</p> <p>11 start new chains, but I think the first reference to</p> <p>12 you is -- well, yeah, on page 2, the 2248, down at the</p> <p>13 bottom there is Ms. Cheney's email to you and the</p> <p>14 others, "Can someone give this guy a statement of the</p> <p>15 truth?"</p> <p>16 And then there's -- a Christine Ball replied,</p> <p>17 "Peter and I spoke and we don't think anyone should be</p> <p>18 responding to him."</p> <p>19 And then Ragone replies, "I'll call you in a</p> <p>20 second."</p> <p>21 And then you reply, and your reply starts on page</p> <p>22 1 and goes over to the top of page 2. And is it a</p> <p>23 fair statement that in your reply of August 23 to</p> <p>24 Elyse and Mark and the others, you repeat and defend</p> <p>25 your recommendation that he had no obligation to</p>

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<p style="text-align: right;">143</p> <p>1 submit to a pre-publication review?</p> <p>2 A That's what's written there, yes.</p> <p>3 Q And then on the second page of the document, which is</p> <p>4 a continuation of your email, you say, "As discussed</p> <p>5 from the beginning, all this is hand wringing prior to</p> <p>6 anybody reading the book. The book reveals nothing</p> <p>7 new except Mark's personal observations."</p> <p>8 A This correspondent didn't receive an advanced copy of</p> <p>9 the book. He did, by this time, see the press</p> <p>10 release, and so he's doing a knee jerk reaction to the</p> <p>11 pre-release without ever reading -- ever breaking</p> <p>12 the book cover. And he might have spoken with someone</p> <p>13 at one of the places where the book was released, but</p> <p>14 they were still reviewing it. And I seriously doubt</p> <p>15 they were telling this guy anything other than the</p> <p>16 party line which was, you know, until it's reviewed,</p> <p>17 you know, everything is suspect.</p> <p>18 Q Right.</p> <p>19 A So Hosenball, he was doing what he's supposed to do as</p> <p>20 an investigative reporter, trying to dig up some stuff</p> <p>21 and making news headlines.</p> <p>22 Q Sure. And you said in the next to the last paragraph,</p> <p>23 "While I'm not anyone's attorney but Mark Owens, my</p> <p>24 general advice is ignore Mr. Hosenball and neither</p> <p>25 confirm or deny the author's name."</p>	<p style="text-align: right;">145</p> <p>1 I will tell you it has number 28 up at the top, and</p> <p>2 that is my writing that was not on the original</p> <p>3 document.</p> <p>4 (Exhibit 55</p> <p>5 marked for identification.)</p> <p>6 Q Do you remember Exhibit No. 55?</p> <p>7 A I do, because I think the first sentence captures</p> <p>8 Elyse Cheney's personality just about as good as you</p> <p>9 can. Hyper, over the top, emergency, urgency. It's</p> <p>10 the -- I think literally her voicemail was, "We're</p> <p>11 fighting for our survival" or words to that effect.</p> <p>12 And it was only a reaction to some news reporter's</p> <p>13 statement that -- yeah, this Julie Boseman's statement</p> <p>14 that the Pentagon spokesman said they believed the</p> <p>15 book violated Department regulations.</p> <p>16 Q And that spokesman said it should have been reviewed</p> <p>17 prior to release?</p> <p>18 A I think that's what it says here. I haven't read it</p> <p>19 fully.</p> <p>20 (Exhibit 56</p> <p>21 marked for identification.)</p> <p>22 Q I've handed you an email string marked as Exhibit 56,</p> <p>23 two-page document. Second page just has a portion of</p> <p>24 your address, but there is an email from you where you</p> <p>25 say, "Did Kevin Maurer deliver the books to JS*C" and</p>
<p style="text-align: right;">144</p> <p>1 A Yeah, because this guy was wanting to release Matt's</p> <p>2 name, and it had not been released by the publisher or</p> <p>3 anyone. I think what happened is someone from his</p> <p>4 former unit had talked to somebody at Fox and had</p> <p>5 slipped his name out that way.</p> <p>6 By this time, I knew Matt's real name, because</p> <p>7 that was in connection with forming the double-blind</p> <p>8 LLC, that he said his attorney in Virginia had formed</p> <p>9 a company for him, and that's where he was going to</p> <p>10 send his receipts, his royalties from the book. And I</p> <p>11 said, "Well, if you want to maintain anonymity, you've</p> <p>12 got to make sure that it's done properly. Can I</p> <p>13 check? What's the name of your business?" And I</p> <p>14 think he said "Chief Consulting," and it wasn't 20</p> <p>15 minutes later that I knew his name, his wife's name</p> <p>16 and where they lived. And so he agreed to allow us to</p> <p>17 set up a double-blind LLC for him.</p> <p>18 Q And then the last thing you say is, "Once the book is</p> <p>19 read, all of this will blow over."</p> <p>20 A Meaning once the book was published and people read</p> <p>21 it, they would see there was more in Nick Schmidle's</p> <p>22 article than there is in that book as far as detail</p> <p>23 and information goes. It's just his perspective from</p> <p>24 an Operator.</p> <p>25 Q Let me show you what is marked as Exhibit No. 55. And</p>	<p style="text-align: right;">146</p> <p>1 some other shorthand, and that's dated August 25. Do</p> <p>2 you remember sending that email asking if Kevin Maurer</p> <p>3 had delivered books?</p> <p>4 A I don't have any independent recollection of it.</p> <p>5 Q And then there is an email reply from Mark at 8:45.</p> <p>6 Yours is 6:28 a.m., so presumably his is 8:45 a.m.,</p> <p>7 although it doesn't say so. And he replies, "Sure</p> <p>8 did! They have all received and are reading it at</p> <p>9 this time. One book went to CIA. We're hoping to</p> <p>10 hear from them at some point today.</p> <p>11 "I'll keep you posted. Obviously we are hoping</p> <p>12 for zero issues and to simply be left alone. Thanks</p> <p>13 again for the hard work and help."</p> <p>14 Do you recall getting that from Mr. Bissonnette?</p> <p>15 A I don't have an independent memory of that.</p> <p>16 Q And then there's a reply from you to him where you</p> <p>17 say, "Good call to give the agency a copy."</p> <p>18 Why did you think it was a good call to give the</p> <p>19 agency a copy?</p> <p>20 A As I sit here, I don't recall why I said that.</p> <p>21 Q Then you continue, "I am pretty confident that once</p> <p>22 they read it everyone will calm down. I still think</p> <p>23 it's a good call for us not to have submitted the book</p> <p>24 to them. They probably would have told you none of it</p> <p>25 was classified."</p>

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<p style="text-align: right;">147</p> <p>1 And then there's an email above that, 2 "Correction: probably would have told you all of it 3 was classified and then if you wanted to publish it 4 could be a bigger pot of trouble." 5 Did you send those emails to your client, 6 Mr. Bissonnette? 7 A Yeah, I don't have an independent recollection of it, 8 but that's what the document says. 9 Q And on August the 25, was it still your opinion that 10 it was a good call not to have submitted the book to 11 them? 12 A That's what the document says. 13 Q I know. I'm asking if that accurately described your 14 state of mind on that occasion. 15 A As I sit here, I don't have any independent 16 recollection of that. 17 (Exhibit 57 18 marked for identification.) 19 Q Exhibit 57 is a copy of a couple of emails, but the 20 one I want to talk to you about is on the first page. 21 It's an email from you to Mark Owen, dated August 26, 22 2012 at 9:35 p.m. And it says -- and no one else is 23 copied on this but Mark. It says, "You should say you 24 understood the CINA to prohibit your release of 25 classified or classifiable information including</p>	<p style="text-align: right;">149</p> <p>1 What is "two mikes"? 2 A Two minutes. It's military. 3 Q Okay. 4 A Yeah, this appears to be most of the same as 57 with 5 the -- 6 Q Right. 7 A -- exception of my email at the top. 8 (Exhibit 59 9 marked for identification.) 10 Q Do you recognize Exhibit 59 as an email from you to 11 Diana Bauer with the Subject of "Mark Owen" and the 12 Importance of "High"? 13 A I don't remember this particular email, but I do 14 remember asking Diana Bauer to provide some research 15 for me. 16 Q Do you remember asking her to do that on or around 17 August 27 of 2012? 18 A Yeah. I can't be sure of the date, but apparently 19 that's what it was. 20 Q And the request is to research whether a retired 21 military person has to send documents he intends to 22 publish to be first reviewed by anyone in the 23 Government, correct? 24 A Yeah, that's what it says. 25 Q By this time, August 27th, the book had been written</p>
<p style="text-align: right;">148</p> <p>1 tactics, techniques, and procedures." 2 And then it goes on and it says -- I assume you 3 were continuing. He should say, "The manuscript was 4 vetted by a special operations attorney with over 20 5 years of active duty service. He has previously 6 assisted other former military special operations 7 authors in vetting their manuscripts. You understood 8 your duty, understood the CINA and the limits of 9 advance allowed, and took that duty as seriously as 10 you took any mission. You would never print or say 11 anything to compromise the security of the US or the 12 safety of the men you served with." 13 Do you recall telling Mr. Bissonnette those were 14 things he should say? 15 A Yeah, you kind of paraphrased it; but, yeah, I 16 recall -- 17 Q I did. 18 A -- that suggestion. I think it was in reaction to 19 people wanting some type of press release or wanting 20 him to say something. 21 (Exhibit 58 22 marked for identification.) 23 Q August 26, 2012, a series of emails marked as Exhibit 24 58 in front of you. There's an email from you to Mr. 25 Owen, "Can we talk now for two mikes?"</p>	<p style="text-align: right;">150</p> <p>1 and fully vetted by you, correct? 2 A That's right. 3 Q And, in fact, had been printed and copies distributed? 4 A Advance copies, yes, sir. 5 Q Why were you at this date, after the book has already 6 printed, asking for research on whether a retired 7 military person needs to have a book reviewed prior to 8 publication? 9 A Yeah, as I sit here, what I recall is Cheney 10 mentioning or saying something that he was retired, 11 and I was thinking to myself, "Wait a minute. That's 12 not what I understood the whole time." And I think 13 there's a series of emails later about me asking 14 specifically, "What is your military status?" Because 15 I think Cheney was saying he's retired. She kept 16 saying he's retired. And then I realized after this 17 that she just indiscriminately meant retired versus 18 separated versus out of the military. She didn't 19 know. 20 Q So did you think she did? 21 A Did I think she did what? 22 Q Know. 23 A I thought she was just generally confused and 24 didn't -- getting bogged down with details. 25 Q And you wouldn't have relied upon Ms. Cheney to</p>

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<p style="text-align: right;">151</p> <p>1 accurately describe for you Mr. Bissonnette's status</p> <p>2 with the military, would you?</p> <p>3 A No.</p> <p>4 Q So again --</p> <p>5 A But she did cause some concern for me, and that --</p> <p>6 Q That I accept. But my question again is this could --</p> <p>7 one could say this is research that should have been</p> <p>8 done before the advice about whether he was required</p> <p>9 to submit to a pre-publication review, and it's being</p> <p>10 done after the book is already printed.</p> <p>11 A That's if you didn't know what his status was. But</p> <p>12 she brought this up in August, that he was retired, in</p> <p>13 some cryptic way, and I wanted to cover all the bases.</p> <p>14 It had nothing to do with my understanding prior to</p> <p>15 that date. This is really the first time that I</p> <p>16 became aware that she was using that terminology, from</p> <p>17 what I remember.</p> <p>18 (Exhibit 60</p> <p>19 marked for identification.)</p> <p>20 Q Let me show you Exhibit 60, which is a series of</p> <p>21 emails, and let's start on the last page of the</p> <p>22 document and come forward.</p> <p>23 There's an email, on which you are not copied,</p> <p>24 from Italie Hillel to Christine Ball that says,</p> <p>25 "Christine, we're running story on Defense Department</p>	<p style="text-align: right;">153</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Do you recall asking her whether Mark was in the</p> <p>4 Reserves?</p> <p>5 A Yeah, I wanted to make sure again, since she had sent</p> <p>6 me off on -- about the retired thing, I wanted to make</p> <p>7 sure he was not in the Reserves.</p> <p>8 Q Is there some reason you did not know whether he was</p> <p>9 in Reserves as of August 27?</p> <p>10 A He never gave me the DD Form 214 that he told me he</p> <p>11 was going to give me. He never gave me any of the</p> <p>12 discharge paperwork; so at that point, I didn't know</p> <p>13 what his status was. I started to get a little</p> <p>14 concerned that he had some Reserve obligation; because</p> <p>15 if he had a Reserve obligation, then he would fall</p> <p>16 under the regulations for -- the active duty</p> <p>17 regulations -- excuse me. You have to look at the DoD</p> <p>18 directive, but in there there's an applicability</p> <p>19 paragraph that says whether or not this regulation</p> <p>20 pertains to Reserve and National Guard, and likely he</p> <p>21 would have had some further obligation to submit if he</p> <p>22 was in the Reserves.</p> <p>23 And that's why I was asking the question, because</p> <p>24 Ms. Cheney said a couple of things, and I just wanted</p> <p>25 to make sure he was not in the Reserves at that point.</p>
<p style="text-align: right;">152</p> <p>1 checking book. Do you guys have comment?"</p> <p>2 And then the next one is from Ms. Hillel to</p> <p>3 Christine Ball, "We ran the following this afternoon."</p> <p>4 And then there is a reference to the story that</p> <p>5 the AP ran.</p> <p>6 And then in the middle of that second page, there</p> <p>7 is an email from Ms. Cheney to Mr. Owen and to you,</p> <p>8 dated August 27, 3:54 p.m.; do you see that one?</p> <p>9 A I'm sorry. Tell me the date/time group again?</p> <p>10 Q August 27, 3:54 p.m., middle of the page.</p> <p>11 A All right.</p> <p>12 Q Find that?</p> <p>13 A Yes, from Cheney?</p> <p>14 Q Yes, and do you see that you were one of the</p> <p>15 recipients of that?</p> <p>16 A Yes.</p> <p>17 Q And then she says, "See, why can't we give them the</p> <p>18 actual information so they get it right -- which is</p> <p>19 that he had an obligation not to publish classified</p> <p>20 info, but no obligation to go through the vetting</p> <p>21 process, as he says in point four. I mean, can't we</p> <p>22 agree that on background?"</p> <p>23 And then you replied to that about -- what is it,</p> <p>24 about 10 minutes later, to Ms. Cheney only, where you</p> <p>25 say, "Mark is not in Reserves, right?"</p>	<p style="text-align: right;">154</p> <p>1 Q Because you didn't know what his actual status was?</p> <p>2 A Well, my understanding was that he was off of active</p> <p>3 duty as of February 1st, 2012, but never got the</p> <p>4 documents from him and he never provided them to me,</p> <p>5 so --</p> <p>6 Q And without knowing whether he was in the Reserves or</p> <p>7 not, you advised him he had no pre-publication review</p> <p>8 obligation?</p> <p>9 A Yeah, I don't like your question, because it doesn't</p> <p>10 fairly encompass the context.</p> <p>11 Q Did you know he was not in the Reserves?</p> <p>12 A I strongly believed he was not, based on my previous</p> <p>13 conversations with him; but as I said, he failed to</p> <p>14 give me the discharge certificate, so I wasn't 100</p> <p>15 percent sure.</p> <p>16 Q And not being 100 percent sure, you advised him he had</p> <p>17 no pre-publication review obligation?</p> <p>18 MR. FURMAN: Objection.</p> <p>19 A No, that's not the only reason.</p> <p>20 MR. FURMAN: I think it's mischaracterizing the</p> <p>21 testimony,</p> <p>22 But you can answer.</p> <p>23 A That's not the only reason.</p> <p>24 Q I know it's not the only reason, but is it accurate</p> <p>25 that, number one, you didn't know if he was in the</p>

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<p style="text-align: right;">155</p> <p>1 Reserves; and not knowing, you advised him he had no 2 pre-publication review obligation? 3 A Not when you put it that way. You're wrong. So I 4 already answered your question. 5 Q On the first page of the document, August 27 at 4:16 6 p.m., you have an email to Ms. Cheney that says at the 7 end of the first paragraph, "If Mark was still in the 8 Reserves it may be a different story if the book 9 contained classified, but it does not. So, in any 10 event no worries." Correct? 11 A That's what it says. 12 Q And then you say, next paragraph, one sentence, "Mark 13 just texted me back and said he is not in Reserve." 14 Is that when you learned for the first time that Mark 15 was not in the Reserves? 16 A That's when Mark confirmed he was not in the Reserves. 17 That's not the first time, because, like I said, 18 before that time, my belief was he was not in the 19 Reserves based on our previous conversations. 20 Q Is it true that your email to Ms. Cheney on page 2 21 where you say, "Mark is NOT in the Reserves, right?" 22 is the first place -- is the first time you attempted 23 to confirm your belief that he was not in the 24 Reserves? 25 A No. I previously had done that with Mark when I had a</p>	<p style="text-align: right;">157</p> <p>1 do think we should give Kevin's name in conjunction 2 with this." 3 Were you in agreement with them giving your name 4 out? 5 A I don't have any independent recollection of this 6 email. 7 Q Second paragraph, "The premise for any potential 8 concern of Government agencies over the book is the 9 supposition that the book contains classified 10 information or any facts that might put any of his 11 fellow personnel in any jeopardy. The author was very 12 mindful of this when working on the book and we are 13 very confident that we were successful. 14 "As the author" -- let me back up. They are 15 saying, "Can everyone look at the below that Peter 16 drafted, especially Kevin" -- and I think that's Kevin 17 Podlaski, because I don't see Kevin Maurer copied -- 18 oh, Kevin Maurer is also copied. "Especially Kevin 19 and let me know if you think it's okay". 20 And then they say, "The premise is it contains 21 confidential information. The author was mindful of 22 this. As the author of No Easy Day was discharged 23 from the military at the time he wrote the manuscript, 24 he was not required or compelled by any US law to 25 submit it to any military or government agency before</p>
<p style="text-align: right;">156</p> <p>1 discussion with him in January about his military 2 status. 3 Q So in January, you believed he was not going to be in 4 the Reserves after he exited active duty? 5 A That's correct. I was under the impression that as of 6 February 1st, he was done, he was separated. Because 7 I explained to him the different requirements based 8 upon the military status or lack thereof. 9 But Ms. Cheney's uber-excitement and over 10 dramatizations just raised these issues up. 11 MR. JOHNSTON: Object to the last sentence as 12 nonresponsive. 13 (Exhibit 61 14 marked for identification.) 15 Q Do you have Exhibit 61? 16 A I do. 17 Q The first page of this document appears to be -- it's 18 only the first page I'm concerned with, I'll tell 19 you -- appears to be an email from Christine Ball to 20 you and others, Subject: Resending DRAFT STATEMENT, 21 dated August 27. 22 Do you recall receiving this email? 23 A I don't have any independent recollection of this. 24 Q The email that is resent says in the first paragraph, 25 "Peter and I have spoken since our call and we really</p>	<p style="text-align: right;">158</p> <p>1 publishing." 2 Did you agree with that statement in this 3 proposed statement that Ms. Ball wanted to release? 4 A As I said, I don't have any independent recollection 5 of this email. 6 Q As you sit here today, do you agree with it? 7 A I don't know. 8 (Exhibit 62 9 marked for identification.) 10 Q I've handed you 62. The second email on the top page 11 is from Ms. Cheney to a bunch of people, people like 12 Mr. Bissonnette would describe as his team, I guess, 13 but it includes you. Do you see that there? 14 A I do. 15 MR. FURMAN: The top of the email is from Brian 16 Tart. 17 MR. JOHNSTON: Correct. 18 MR. FURMAN: Is that what you're referring to? 19 MR. JOHNSTON: I'm referring to the one below 20 that. 21 MR. FURMAN: And that's from Elyse Cheney? 22 MR. JOHNSTON: Correct, in which Mr. Podlaski is 23 one of the recipients. 24 MR. FURMAN: Okay. 25 Q And Ms. Cheney says, "Guys, this misinformation has</p>

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<p style="text-align: right;">159</p> <p>1 got to stop. Mark" parens "and I" closed parens "are 2 really upset about this. We are sick to death of 3 reading all of this stuff that says he's done 4 something wrong. Can someone just print the actual 5 policy and stop the madness? Mark has everyone 6 calling him and his family saying he's going to jail 7 and he has done nothing wrong, which he has not -- and 8 he has done something wrong which he has not done. 9 Can we leak the statement from the lawyer Podlaski? 10 Really this is horrible for Mark because he's being 11 pilloried even in his own community." 12 Do you remember receiving that email from 13 Ms. Cheney? 14 A I don't. 15 Q And by the way, let me just ask globally for a minute, 16 Mr. Podlaski. On these emails where you've said you 17 don't recall receiving them, has there been any of 18 them where you would dispute receiving them, or are 19 you just saying you don't remember one way or the 20 other? 21 A I don't remember one way or the other, and I don't 22 have any reason to doubt that they were exchanged. I 23 mean, they were part of discovery. They must have 24 been part of the record. 25 Q I understand.</p>	<p style="text-align: right;">161</p> <p>1 Mr. Bissonnette? 2 A You know, when it first started breaking after the 3 news release, I read a couple. But then, you know, it 4 was just AP Wire picking up stories from other places 5 and no new information; it was all the same, in my 6 mind, garbage. Anybody who's commenting, they hadn't 7 even read the book, and they were just commenting on a 8 book being released without review and they thought 9 that was newsworthy. So I really just stopped 10 engaging on those, except where I was specifically 11 asked to, you know, do something. 12 Q I'm confident you probably answered my question in 13 there, but let me be sure. 14 Do you agree then that there were people saying 15 bad things about Mr. Bissonnette/Mark Owen at or about 16 this time? 17 MR. FURMAN: Objection. 18 A Yeah, I mean to further refine your question, if 19 you're asking me if people were saying he should have 20 released the book and didn't, yeah, there were people 21 saying that. As far as saying bad things, I don't 22 know. 23 Q Okay. 24 (Exhibit 63 25 marked for identification.)</p>
<p style="text-align: right;">160</p> <p>1 A I just don't have any independent recollection of it. 2 Q Thank you. 3 Do you agree with Ms. Cheney's characterization 4 that Mark was being pilloried even in his own 5 community? 6 MR. FURMAN: Objection. 7 A I have no idea. 8 Q So you were not aware of -- do you know what the word 9 "pilloried" means? 10 A Does it mean burned at the stake? 11 Q That's close probably. I think of it as meaning 12 people are saying bad things about you. If that's 13 what it means -- 14 A Okay. 15 Q -- would you agree that people were saying bad things 16 about Mr. Bissonnette? 17 MR. FURMAN: Objection. 18 You can answer. 19 A I had no knowledge other than what the very dramatic 20 Elaine (sic) Cheney -- 21 MR. FURMAN: You meant to say Elyse Cheney. 22 A Oh, I'm sorry. Elyse Cheney was conveying. 23 Q Okay. So you didn't have -- you had not personally 24 read anything in the media or on the internet where 25 people were saying bad things about Mark Owen or</p>	<p style="text-align: right;">162</p> <p>1 Q Exhibit 63 is an email from you, dated August 27 at 2 5:43 p.m., replying back, and it says, "Again, I would 3 rather not have my name published." 4 Does that refresh your recollection as to whether 5 you wanted your name released as being in support of 6 Mr. Bissonnette's not having done a pre-publication 7 review? 8 A I recall writing this email. 9 Q Why did you not want your name to be associated with 10 the advice he had received not to submit to a 11 pre-publication review? 12 A I think the answer to that question is in the second 13 sentence, which is that the attention should not be 14 shifted into a legal cat fight. 15 Q Okay. And it was your opinion that if you came out 16 publicly as an attorney who advised him on this issue, 17 it was your belief it would be shifted into a legal 18 cat fight, to use your words? 19 A Right. And moreover, it was not going to be my call. 20 It was going to be Mark's call and the publisher's 21 call. But they asked me whether I -- what I thought 22 about it, and that's what my opinion was at the time 23 apparently, is that you want it to be about the book 24 and the book sales, not about the legal cat fight. 25 Q And then the last sentence you say that you would add,</p>

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<p style="text-align: right;">163</p> <p>1 "Because the book contained no classified 2 information." Is it a true statement that on the date 3 of this email, it continued to be your opinion that 4 the book contained no classified information? 5 A Yes. 6 Q And subject only to the small or minor issues that 7 Mr. Bissonnette talked about, that continues to be 8 your belief today? 9 A Asked and answered. 10 Q Agreed. Sustained. 11 (Exhibit 64 12 marked for identification.) 13 Q This is a continuation of the email string that is 14 marked as -- I'm sorry. Let me rephrase. 15 Exhibit 64 is a continuation of the email string 16 that was marked as 63, where you said you would rather 17 not have your name published. If you look on page 2, 18 above your email is a reply from Ben Sevier where he 19 says, "Our attorneys are not comfortable with us 20 issuing any statement regarding legal issues without 21 their approval, and they need time to consider and 22 approve the release. Kevin Podlaski, in the interest 23 of making that happen as soon as possible, I'd like to 24 get you on the phone with Alex Gigante, our in-house 25 counsel with whom you have spoken in the past, and two</p>	<p style="text-align: right;">165</p> <p>1 A Um-hum. 2 Q Did you voice any objection or propose any 3 modifications to the statement after receipt of this 4 email? 5 A I'm sorry. I don't recall. 6 Q Just so you appreciate my concern for your time, I 7 want you to know I've not marked an email from 8 Ms. Cheney to you that consists of "WTF". 9 A With three exclamation points behind it? 10 Q I didn't notice, but maybe. 11 A That does capture the essence of her personality. 12 (Exhibit 65 13 marked for identification.) 14 Q Mr. Podlaski, I've handed you what I've marked as 15 Exhibit 65, which is a three-page document. If we go 16 back to the second page, there is at the bottom of the 17 second page an email from you to Mr. Podlaski where 18 you said, "Mark, Elyse sent me the article by Justin 19 Fishel." And there's the reference to, "As you 20 predicted, SOCOM 3 ft hover." What does a "3 ft 21 hover" mean? 22 A It means that people are so excited that they, you 23 know, lift themselves off the ground and put their 24 hands over their head and scream. So it's just a 25 figure of speech, of course.</p>
<p style="text-align: right;">164</p> <p>1 attorneys with whom he is working with." 2 Did that phone call take place? 3 A Yes. 4 Q Okay. There's a reply from you, "Okay Ben. I'll be 5 on the road tomorrow. Call my cell," and you give the 6 cell phone, correct? 7 A Correct. 8 Q And then there's a reply from Mr. Sevier to you that 9 starts on page 1 and goes on to page 2, talking about 10 who you'll be talking with, and it says, "They've 11 joined our team late, so need background. I've shared 12 your email yesterday giving them a baseline." 13 And then above that there's an email from you 14 following the phone call, correct? 15 A Correct. 16 Q Where you say, "I spoke with Dean and Susan. I 17 understand they've written a mutually agreeable public 18 statement. If possible, I would like a copy of it." 19 And then the rest of it, of the email on page 1, is 20 from Mr. Sevier to you, "Here's what we shared. The 21 story is live on NYT." 22 Is that New York Times? 23 A I have no idea. 24 Q Okay. "Right now." And then there is the statement 25 that they proposed releasing, correct?</p>	<p style="text-align: right;">166</p> <p>1 Q Okay. And then you say to him, "As you also 2 predicted, once the book is out and they read it, 3 everyone will calm down." 4 And then you quote Tom Petty, correct? 5 A That's correct. 6 Q And then he replies, "Thanks brother. Appreciate all 7 the help." 8 And then the next email is another one from you 9 where you report, "In a three way phone call with 10 Elyse, me, and Kevin Maurer 50 minutes ago, Maurer 11 said he gave my name to USSOCOM." 12 And then you say, "Number 1, if I talk to them 13 they will have to call me. I'm not calling them. 14 "2, if they call I'm only going to say I vetted 15 the manuscript. Minimal changes were required. That 16 is, there was no mention of sensitive matters." 17 And that's what you were prepared to say if SOCOM 18 called you, correct? 19 A Correct. 20 Q And did they call? 21 A They never called. 22 Q And then above that is an email from you to Mr. Owen? 23 A Yeah. 24 Q It's another one where it's an email from you to you 25 with a copy to him, presumably so you could preserve</p>

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<p style="text-align: right;">167</p> <p>1 it for yourself somehow. But you say, "Need to know 2 whether op Neptune was a compartmentalized operation. 3 If so, did you sign a sensitive compartmented 4 information non-disclosure agreement before that op?" 5 Why are you asking him on August the 28th whether 6 Operation Neptune Spear was a compartmented operation? 7 A Once again, Elizabeth Cheney -- excuse me, Elyse 8 Cheney -- I've called her everything but her real name 9 now. Elyse Cheney was just freaking out, and I just 10 wanted to nail down all the possibilities one more 11 time once -- and I think something in -- it wasn't 12 Hosenball, but it was a guy from -- another National 13 Security Correspondent made mention of the sensitive 14 nature of the compartment -- excuse me -- of the 15 operation, and that just -- wanted to make sure one 16 more time with Mark that there was -- that he had not 17 signed any document and it was not SAP. 18 Don't forget now, we just had advanced copies put 19 out, and so the people who you would give to the 20 Office of Security and Policy Review, they would send 21 it to these people anyway, and here they've got copies 22 of the book. So before the national release, these 23 people have a copy of these books. 24 So, effectively there was a vetting done by these 25 people before it was made national and released</p>	<p style="text-align: right;">169</p> <p>1 Q And indicated a desire to help him if he was? 2 A Right. That's because I came across this -- you can 3 see the hyperlink in there, that Spielberg talks to 4 ex-Navy SEAL, and that indicated that he was in talks 5 with Spielberg about releasing the movie -- or making 6 a movie from his book. 7 Q So is this hyperlink on Spielberg is Spielberg talks 8 to Matthew Bissonnette? 9 A I don't know if it said Matthew Bissonnette. I don't 10 recall. It just said a Navy SEAL. 11 Q Okay. And you assumed it was him? 12 A Yeah, that's what I did. And then he responded, "Not 13 selling!" And then he kind of put that to rest with 14 "SS" -- whoever that is, I don't know who that is -- 15 "should have put out a statement saying that was false 16 as well." 17 MR. JOHNSTON: Okay. Let's take a 5 or 10-minute 18 break and let me organize the rest of these documents 19 and see how fast we can go through them. 20 THE WITNESS: Yes, sir. 21 (Recess) 22 (Exhibit 67 23 marked for identification.) 24 BY MR. JOHNSTON: 25 Q Mr. Podlaski, I've handed you what's marked as Exhibit</p>
<p style="text-align: right;">168</p> <p>1 nationally, but, you know, this would represent the 2 last clear chance to put the brakes on and submit the 3 book, had Mark said, "Yeah, it was an SEI Special 4 Access mission." And at that point I would have said, 5 "Whoa, we need to submit the book formally." Even 6 though everybody who would have gotten the book 7 already got the book, you still have to check that 8 block and do it their way. But I don't even know if 9 he ever answered this. 10 Q Let me show you Exhibit 66. 11 (Exhibit 66 12 marked for identification.) 13 Q In the middle of the first page of this is an email 14 from you to Mr. Bissonnette and then a reply from him, 15 and then another reply from him, correct? 16 A Let's see. It appears that there is at least two, 17 maybe three, emails in here. I think there's three 18 emails in here. 19 Q Correct. So the first one in time -- 20 A There's four, yeah. Go ahead. I'm sorry. 21 Q That's okay. The first one in time from you, August 22 29, 2012 at 10:25 a.m., you wrote him and asked 23 whether he was going to make a movie from the book, 24 correct? 25 A Um-hum.</p>	<p style="text-align: right;">170</p> <p>1 67, which appears to be an email exchange between you 2 and Mr. Bissonnette, dated August 30, concerning the 3 60 Minutes interview. Do you remember this exchange? 4 A I don't have any independent recollection of it. I'm 5 sorry. 6 Q Do you remember being involved in the discussion of 7 the 60 Minutes interview on the "No Easy Day"? 8 A You know, I think there was something circulated about 9 it, but I really can't recall how much. 10 (Exhibit 68 11 marked for identification.) 12 Q Let me show you what's marked as Exhibit 68, another 13 email exchange, dated August 30. And if you go back 14 to the next to the last page, there's an email from 15 Christine Ball saying, "The AP article just ran." 16 And then Mark Fabiani replied, saying, "Awesome 17 read!!! Perfect. Great work." 18 And then another one from Elyse Cheney -- well, 19 Mr. Ragone has one, "Great work on all." 20 And then Elyse Cheney, "Guys, how can we get Joby 21 Warrick's article in which he said Mike had no 22 obligation to send the manuscript to DoD out there in 23 a big way? Joby is highly respected journalist." 24 And then Mark Fabiani replies, "We're getting 25 serious push back from Government. They all say, at</p>

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<p style="text-align: right;">171</p> <p>1 least according to Hosenball, that Mark had signed a 2 contract that obligated him to do pre-clear even after 3 retired."</p> <p>4 And then there's an Elyse Cheney email to you. 5 "Kevin, can you chime in here? Fabiani, do you think 6 we should deploy Kevin P on background so he can quote 7 our argument?"</p> <p>8 Mark Fabiani, "I think the story has moved past 9 the pre-clearance issue at this point so it might not 10 make sense."</p> <p>11 Do you remember getting -- being involved in this 12 string of emails discussing this?</p> <p>13 A I don't have any independent recollection of it.</p> <p>14 Q Okay. Then on August 30th, page 1, there's an email 15 from you, replying to the group. "If you want to 16 respond to Hosenball I recommend only asking him what 17 is the authority for his position. That is, 18 specifically; what Govt form, statute, Executive 19 Order, or regulation is he referring when he claims 20 author signed a contract obligating him to pre-clear."</p> <p>21 Do you remember advising the group that if they 22 were going to respond, it should be limited to that 23 type of response?</p> <p>24 A No, but this "even after retired," that language 25 apparently was to Hosenball. Maybe that was why Elyse</p>	<p style="text-align: right;">173</p> <p>1 were, based on what I have said previously, based on 2 my experience, based on my review of Standard Form 3 312, based on my review of DD Form 1847-1, which he 4 said he never signed and didn't recall being briefed 5 on. So, you know, you're trying to turn this thing on 6 its head.</p> <p>7 But my thing to Hosenball was, "Hey, you tell me, 8 Mr. Hosenball, why you think he had an obligation." 9 And if he would have said he signed a DD Form 1847-1 10 in connection with Operation Neptune Spear, I would 11 have said, "Show me."</p> <p>12 And if he would have showed me, then I would have 13 said, "By golly, you're right."</p> <p>14 If he would have shown me that he was still on 15 active duty then, I would have said "that DoD 16 regulation applies and, therefore, you're right, when 17 he wrote the book or had it in some form prior to 18 being released from active duty -- had it in some 19 written form prior to being released from active 20 duty."</p> <p>21 Q And I get it. I don't care about Mr. Hosenball at 22 all. My question was, did you do any legal research 23 prior to your advice to Mr. Bissonnette with regard to 24 whether he had a pre-publication review obligation? 25 A Yes.</p>
<p style="text-align: right;">172</p> <p>1 Cheney was talking to me about retired things; I don't 2 know. But in any event, no, I don't have an 3 independent recollection of any of this, except I knew 4 that Hosenball -- I felt he was a blind rhinoceros 5 running around trying to trample people.</p> <p>6 Q Let me ask you the question that you proposed they ask 7 Hosenball with regard to your conclusion that there 8 was no obligation to do a pre-publication review of 9 the book. What is the authority in the form of 10 statute or Executive Order or DoD regulation on which 11 you relied to reach the conclusion that there was no 12 pre-publication review obligation?</p> <p>13 A We've addressed this several times.</p> <p>14 Q Yeah, and let me modify my question, because we've 15 talked about the factual stuff, and I don't -- you 16 don't need to tell me factually, "Mark said this, I 17 heard that."</p> <p>18 A Okay.</p> <p>19 Q Et cetera. Is there any legal research that you did 20 prior to advising Mr. Bissonnette that he did not have 21 a pre-publication review obligation?</p> <p>22 A Well, first off, you're coming to that conclusion, and 23 I'm not going to necessarily adopt your conclusion 24 that I advised him he didn't have to have a 25 pre-publication review. I told him what the options</p>	<p style="text-align: right;">174</p> <p>1 Q And is that reflected in legal memoranda or copies of 2 cases or anything? Because I have not seen anything 3 out of your file before the August 27 request for a 4 memo that we marked earlier.</p> <p>5 A Right, and as I said to you previously, I spoke with 6 Mark Owen and --</p> <p>7 Q Not legal research. I'm only asking about legal 8 research.</p> <p>9 A Do you want me to answer your question or not? I'm 10 trying to answer your question.</p> <p>11 Q If it's legal research, I want to hear about it. You 12 don't have to repeat what you've told me before.</p> <p>13 A Well, with everything that I've said as precedence, 14 let me tell you that the legal research I did I have 15 done in previous matters and in connection with 16 Mr. Bissonnette's book. Is there a writing to that 17 effect? No.</p> <p>18 Q Okay. Are you telling me that in connection with your 19 advice to Mr. Bissonnette and your analysis of his 20 situation, you relied on legal research you had done 21 for other authors on other occasions?</p> <p>22 A I will say that I relied on legal research I had done 23 previously.</p> <p>24 Q Okay. Did you do any research specifically on his 25 situation?</p>

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<p style="text-align: right;">175</p> <p>1 MR. FURMAN: When you say "research," I'm not 2 sure if I understand what you mean. 3 Q Legal research. 4 A What do you mean by "his situation"? 5 Q I mean from -- I'll give you a time frame. From 6 January 1, 2012 to the end of February 2012, did you 7 do any legal research with regard to Mr. Bissonnette's 8 need to know whether he had a pre-publication review? 9 A What legal research are you referring to? 10 Q Respectfully, sir, you're a lawyer. You know what 11 legal research is, looking at statutes, looking at 12 cases, looking at regulations, Westlaw searches, 13 asking associates to do it for you, anything like 14 that. 15 MR. FURMAN: Does that also include drawing upon 16 your own experience? 17 Q I just said from January 1 to February 30. No, it 18 doesn't include things you knew before January 1. Did 19 you do anything new from January 1 to the end of 20 February -- not 30 -- in connection with the retention 21 by Mr. Bissonnette? 22 A Yes. I believe that I printed out Standard Form 312 23 and I printed out DD Form 1847-1, reviewed them and 24 discussed them with Mr. Bissonnette. 25 Q Okay. Anything else?</p>	<p style="text-align: right;">177</p> <p>1 signed by the author" -- and then capital letters -- 2 "DID NOT require him to first send the book to the 3 Govt for review/vetting UNLESS" -- capital letters -- 4 "he thought classified information was contained in 5 the writing. Since we were and are sure it did 6 not" -- let me stop you there. 7 What do you mean by "sure it did not"? Does that 8 mean since we are sure and were sure that the book did 9 not contain classified information? 10 A That's what I think it was referring to, yes. 11 Q "There was no obligation to let the Govt review it 12 before it was published." 13 A That's right, and that should be referring to Standard 14 Form 312, because that's the only document that he 15 could recall signing, and he would not let me contact 16 his security officer to get his current security 17 status or his debriefing status. 18 Q Now, having just read that language, let me ask you, 19 because maybe I paraphrased it wrong earlier. Are you 20 disputing that you told Mr. Bissonnette there was no 21 obligation to let the Government review the book 22 before it was published? 23 A I've -- 24 MR. FURMAN: That is asked and answered. 25 A I mean, read the transcript back for the answer. You</p>
<p style="text-align: right;">176</p> <p>1 A No, not that I can recall. 2 Q Let me show you what's marked as Exhibit -- do you 3 have 68 in front of you still? 4 MR. FURMAN: We do. 5 Q I'm going too fast here. On page 1 at the middle -- 6 well, towards the bottom of the page, there's an email 7 from you dated August 30. Do you see that, where you 8 say, "I recommend the questions to Mr. Hosenball," the 9 one we just talked about? 10 MR. FURMAN: It's dated August 30th at 6:49 a.m. 11 MR. JOHNSTON: Correct. 12 A Okay. 13 Q And then above that, there is a reply by Mr. Fabiani, 14 saying, "He's claiming for what it's worth his 15 Government sources tell him" blah, blah, blah. And 16 then above that is another email from you, dated 17 August 30 at 7:06 a.m. Do you see that? 18 A Yes. 19 Q And then you say, "He is referring to a Non-Disclosure 20 Agreement. However, importantly, there are several 21 types of Non-Disclosure Agreements published by the 22 government and there are important distinctions in 23 each." 24 And then the next paragraph, "We have every 25 reason to believe that the Non-Disclosure Agreement</p>	<p style="text-align: right;">178</p> <p>1 keep asking me the same question. I'm not going to 2 change my response. 3 Q The only reason I'm asking the same question is 4 because I sense you changing your answer. I asked 5 earlier about what research you did in connection with 6 your advice that there was no obligation to submit to 7 a pre-publication review, and you said, I thought, 8 "Mr. Johnston, respectfully, I'm not going to adopt 9 your version of my advice." So now I'm reading your 10 words. "Since we were and are sure it did not, there 11 was no obligation to let the Govt review it before it 12 was published." 13 A So within the context that I believe this to be a 14 Standard Form 312, and if Mr. Bissonnette -- not "if," 15 because Mr. Bissonnette told me that that is the only 16 document he signed, the Standard Form 312, and told me 17 he was not on active duty when he wrote it, and told 18 me that he was not told he was being given information 19 from a Special Access Program and told me he did not 20 sign a Special Access Program Non-Disclosure 21 Agreement, then that is an accurate statement. 22 Q And in the course of your representation, you told him 23 that there was no obligation to let the Government 24 review it before it was published? 25 A Asked and answered.</p>

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<p style="text-align: right;">179</p> <p>1 (Exhibit 69 2 marked for identification.) 3 Q Exhibit 69 is a couple of emails dated August 30, 4 late, which deal with the Jeh Johnson letter, the 5 bottom one. Ben Sevier is saying that he is putting 6 in a drop box the 9-page fax from DoD, correct? 7 A That's what it appears to be. 8 Q And then the next one is from Mr. Bissonnette, saying, 9 "Kevin P, from the looks of the docs, I apparently did 10 sign some sort of SAP program docs." 11 Do you see that one as well? 12 A Yeah, that's an email we examined previously. 13 Q Correct. And then there's an email from you up above, 14 dated 11:43 p.m., just before midnight. You email him 15 and say, "In the book you mention 'white robe'. 16 Wasn't that a SAP?" 17 MR. FURMAN: Is this marked as an exhibit? 18 (Pause) 19 A That's what it says there. 20 Q And then he replies, "And I wasn't on deployment in 21 January that I can remember." 22 A Yeah, I don't have any idea what that means. It 23 doesn't seem to be responsive. 24 Q It doesn't, but let me ask you this. 25 Is there some reason that on August 30 at some 17</p>	<p style="text-align: right;">181</p> <p>1 the transmittal of the fax. 2 A Oh, that's right, because he's mentioning it here. 3 Q And you earlier indicated that you didn't know when 4 you got it. That makes it look like you got it before 5 midnight the day it was sent, doesn't it? 6 A Yeah, apparently so. I thought it was the next day, 7 but I guess I wasn't sleeping when I got it. 8 (Exhibit 70 9 marked for identification.) 10 Q Do you have Exhibit 70 there in front of you now? 11 A Yeah. 12 Q If you go back to the third page, there is an email 13 from Ben Sevier to you, August 30 at 2:49 p.m., 14 "latest legal reporting". This would apparently be 15 before the Jeh Johnson letter was received. This 16 says, "I wanted to draw your attention to the 17 following media reports. Less than definitive, but 18 certainly interesting." 19 And then he has two cites, and then he says, "In 20 light of the possibility of a lawsuit of either civil 21 or criminal court, do you think we should be doing 22 anything to prepare? Do you still think the 23 possibility is remote?" 24 And then you send him a lengthy reply that begins 25 on page 1, correct?</p>
<p style="text-align: right;">180</p> <p>1 minutes before midnight, you were asking for the first 2 time whether "white robe" was an SAP? 3 A No. That's your assessment, is for the first time. 4 We had discussions, Mark and I, about that and what it 5 meant, while I was reviewing the manuscript. 6 So my questioning him about that as an SAP was, 7 once again, generated by the hyperbolic response of 8 Ms. Cheney who was freaking out over Hosenball's 9 questioning. 10 So, once again, just trying to nail down issues. 11 Q When did you discuss "white robe" with 12 Mr. Bissonnette? Is this in one of the phone calls 13 we've already talked about? 14 A Yeah, this is in a phone call in June after I got the 15 manuscript and read through it for the first time. 16 Q Is this one of the same phone calls, the two calls 17 we've already talked about in June, or is there 18 another phone call in June? 19 A No, that's one of the phone calls in June. And I 20 think this is -- gosh, I don't know. This is the 21 30th, so this must have been after the fax receipt of 22 that letter perhaps. 23 Q It is. 24 A Yeah. 25 Q In fact, if you look at the bottom of the page, it's</p>	<p style="text-align: right;">182</p> <p>1 A Yes. 2 Q And among other things you say in your reply, "The 3 book contains NO classified or classifiable 4 information." 5 A Yeah, that seems to be what my opinion was at the 6 time. 7 Q And you say, "It's highly unlikely that Operation 8 Neptune was an SCI program." 9 A Okay. Don't forget now, this is before Jeh Johnson's 10 letter, and this is based upon everything that 11 Mr. Bissonnette had told me, and that he had not 12 signed a form indicating that it was a DD Form 1847-1 13 that it was an SAP. 14 And then also I speak about here how these people 15 who were mentioned here, The President, Panetta and 16 McRaven, they all have classification authority, they 17 have declassification authority. And by virtue of 18 they're speaking about this on international 19 television, it could potentially declassify a Special 20 Access Program to a lesser-classified program. And 21 that is certainly a defense that was available to 22 Mr. Bissonnette and Mr. Luskin when they were dealing 23 with the Government, the fact that these gentlemen had 24 already declassified it. And if it's not a Special 25 Access Program, then there may not be an obligation to</p>

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<p style="text-align: right;">183</p> <p>1 submit it. Moreover, you have to have an 1847-1</p> <p>2 signed for the compartmented program that you're</p> <p>3 working on. Or you should have.</p> <p>4 Q On page 1 of your email and going over to page 2,</p> <p>5 looking at the Paragraph 2a, you say, "As I told your</p> <p>6 retained counsel, the only way the book had to be</p> <p>7 first reviewed was if Operation Neptune had been</p> <p>8 designated as an SCIA, Sensitive Compartmented</p> <p>9 Program"--</p> <p>10 A No, "Information or a Special Access Program".</p> <p>11 Q "Information", thank you. "Or Special Access</p> <p>12 Program." Do you still stand by that statement?</p> <p>13 A Well, that statement demands a full explanation, once</p> <p>14 again, of all of the things that we've already</p> <p>15 discussed in this matter. There's no -- the facts on</p> <p>16 the table are there is no 1847-1 and there's no</p> <p>17 affidavit linking Operation Neptune Spear to --</p> <p>18 Q I'm going to object as non-responsive. I apologize</p> <p>19 for interrupting.</p> <p>20 MR. FURMAN: No, no. It's not nonresponsive.</p> <p>21 MR. JOHNSTON: I'm asking a yes or no question.</p> <p>22 I only have two hours left, and I don't want to listen</p> <p>23 to a lengthy paragraph when I have asked a yes or no</p> <p>24 question. I object as non-responsive. He can say</p> <p>25 "yes", "no", or "I can't answer". But the question</p>	<p style="text-align: right;">185</p> <p>1 was not an SC Program at the operator level?</p> <p>2 A As of 4:01 p.m., yes.</p> <p>3 Q Okay. And do you have that -- do you agree that that</p> <p>4 is true today with the additional knowledge you have</p> <p>5 acquired since then?</p> <p>6 A I -- once again, I have to refer you to what the known</p> <p>7 facts are. So that would be an opinion of mine. And</p> <p>8 the only opinion that counts is the Government's</p> <p>9 opinion.</p> <p>10 Q Continuing on down to the middle of that second page</p> <p>11 at subparagraph e. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And you say, "It is highly unlikely" -- with "highly</p> <p>14 unlikely" underlined -- "that Operation Neptune was an</p> <p>15 SCI program."</p> <p>16 And then there's a sentence that follows that.</p> <p>17 My question is, the sentence that follows it, is that</p> <p>18 the basis for your statement, "It's unlikely that</p> <p>19 Operation Neptune was an SCI program? For example,</p> <p>20 the President, Panetta and McRaven all talked about</p> <p>21 it. That's an indication that it wasn't. Boale and</p> <p>22 Bigelow were given access."</p> <p>23 A No, sir, those are examples after that first sentence.</p> <p>24 Q Okay. All right.</p> <p>25 A Or examples of why it's unlikely; that and also</p>
<p style="text-align: right;">184</p> <p>1 asks for "yes" or "no".</p> <p>2 Q Do you stand by that statement?</p> <p>3 MR. FURMAN: And the only way that Mr. Podlaski</p> <p>4 can answer that question is by giving you the answer</p> <p>5 based on his present knowledge.</p> <p>6 MR. JOHNSTON: He can say, "Yes, I do"; "no, I</p> <p>7 don't."</p> <p>8 MR. FURMAN: With all respect, I don't think he</p> <p>9 can do that. But let's just --</p> <p>10 MR. JOHNSTON: I have a finite amount of time.</p> <p>11 I've asked a simple question.</p> <p>12 Q Do you stand by the statement you type, "The only way</p> <p>13 the book had to be first reviewed by the govt was if</p> <p>14 Operation Neptune Spear had been designated as a</p> <p>15 Sensitive Compartmented Information Program or Special</p> <p>16 Access Program"?</p> <p>17 Do you agree with that statement?</p> <p>18 A I would -- it's not complete.</p> <p>19 Q The next sentence says, "All indications are that Op</p> <p>20 Neptune was NOT an SCI Program -- at least at the</p> <p>21 operator's level."</p> <p>22 Do you agree with that statement today?</p> <p>23 Let me rephrase that.</p> <p>24 Do you agree that the all indications that you</p> <p>25 had available to you on August 30, 2012 were that it</p>	<p style="text-align: right;">186</p> <p>1 everything to do with what Mr. Bissonnette told me.</p> <p>2 Q And then in Paragraph 3(a), last sentence, you say,</p> <p>3 "Because the author was retired at the time he wrote</p> <p>4 the manuscript" --</p> <p>5 A Where is that? 3(a)?</p> <p>6 Q 3(a).</p> <p>7 A I thought it was -- 3(a) says "discharged" and then</p> <p>8 down at the bottom -- yeah, I think that was a</p> <p>9 mistyped.</p> <p>10 Q So you're calling him "retired" as well, aren't you?</p> <p>11 A I think that was a mistype, that's all it was.</p> <p>12 Q So you were critical of Ms. Cheney saying he was</p> <p>13 retired and then you did the same thing?</p> <p>14 A Well, Ms. Cheney did it multiple times. I just did it</p> <p>15 once there. But the first sentence says he was</p> <p>16 discharged after 12 years. You can't be discharged</p> <p>17 after 12 years unless you're medically retired.</p> <p>18 So I admit I made a typographical error.</p> <p>19 Q And then on the last page of the document, back to</p> <p>20 the -- the full paragraph is not indented into the</p> <p>21 sub-paragraph. You say, "Bottom line: There is</p> <p>22 nothing classified in the book and Operation Neptune</p> <p>23 was simply not an SCI SAP -- at least at the</p> <p>24 operator's level. The book reveals nothing new except</p> <p>25 Mark's personal observations." Correct?</p>

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<p style="text-align: right;">187</p> <p>1 A That's what it says.</p> <p>2 Q Did you ever send Mr. Bissonnette an email or letter</p> <p>3 that disagreed or departed from those conclusions,</p> <p>4 nothing classified, Operation Neptune was not an SCI</p> <p>5 or an SAP?</p> <p>6 A I don't believe so. I don't recall, but I don't think</p> <p>7 so.</p> <p>8 Q If you had changed your mind about that, would you</p> <p>9 think it appropriate to tell him?</p> <p>10 A I think I would have a duty to tell him.</p> <p>11 Q And you have not told him?</p> <p>12 A I am no longer retained by Mr. Bissonnette.</p> <p>13 Q I'm sorry?</p> <p>14 A I'm no longer retained by Mr. Bissonnette.</p> <p>15 Q So during the time you were representing him and had</p> <p>16 that duty, you never told him?</p> <p>17 A I think I already said that, yes.</p> <p>18 Q Thank you.</p> <p>19 (Exhibit 71</p> <p>20 marked for identification)</p> <p>21 Q Do you have Exhibit 71?</p> <p>22 A Yes.</p> <p>23 Q At the bottom of Exhibit 71, on the page 1, is an</p> <p>24 email from Mr. Bissonnette to you and Ms. Cheney and</p> <p>25 Mr. Luskin dated, August 31 at 10 a.m., the day after</p>	<p style="text-align: right;">189</p> <p>1 you need just give me a call or shoot me an email."</p> <p>2 Correct?</p> <p>3 A Yeah.</p> <p>4 Q And then he replies, "Kevin, here's a draft. I'd like</p> <p>5 you to take a look before it's circulated to the</p> <p>6 larger group."</p> <p>7 Do you know why he wanted you to look at it</p> <p>8 before it was circulated to the larger group?</p> <p>9 A I have no idea.</p> <p>10 Q Would that be evidence to you that he was relying on</p> <p>11 you in some fashion?</p> <p>12 A I don't know what he thought.</p> <p>13 Q Is it your contention in this lawsuit that he should</p> <p>14 not have defended your prior conclusions that there</p> <p>15 was not a pre-publication review obligation?</p> <p>16 MR. FURMAN: Objection.</p> <p>17 A I'm sorry?</p> <p>18 MR. FURMAN: I'm having trouble with the</p> <p>19 "contention" aspect of your --</p> <p>20 MR. JOHNSTON: Do you want me to read the email</p> <p>21 again where he says there's not a pre-publication</p> <p>22 review obligation sent two days earlier?</p> <p>23 MR. FURMAN: I'm noting my objection to the form</p> <p>24 of the question.</p> <p>25 MR. JOHNSTON: Fine.</p>
<p style="text-align: right;">188</p> <p>1 the Jeh Johnson letter was received, correct?</p> <p>2 A Yeah, that's what it appears to be, yes.</p> <p>3 Q When you -- did you get this email?</p> <p>4 A Yeah, I recall getting this email.</p> <p>5 Q Where it says, "I'd love to get the Mark Owen team</p> <p>6 together really quick and talk"?</p> <p>7 A Yeah.</p> <p>8 Q Was this the first time you had heard the name of</p> <p>9 Mr. Luskin?</p> <p>10 A I don't -- I don't recall, as I sit here. I thought</p> <p>11 it was on the 30th that I heard Luskin's name, that he</p> <p>12 was hired and that this was going to occur the next</p> <p>13 day. As a matter of fact, I think he called me on the</p> <p>14 30th, saying he was just hired.</p> <p>15 Q Is that -- is it your testimony that he called you on</p> <p>16 the 30th and that's when he told you, "Don't talk to</p> <p>17 my client anymore"?</p> <p>18 A I'm pretty sure it was the 30th, yeah. That's what I</p> <p>19 remember.</p> <p>20 Q To be more accurate and fair to you, what you said</p> <p>21 was, "Don't talk to my client unless I'm there," or</p> <p>22 something like that?</p> <p>23 A "Unless I'm present," yeah.</p> <p>24 Q Okay. There is an email from you, replying to</p> <p>25 Mr. Luskin, saying, "Bob, if there is anything else</p>	<p style="text-align: right;">190</p> <p>1 A In answer to your question, I think that Mr. Luskin</p> <p>2 had an obligation and a duty to make his own</p> <p>3 assessment.</p> <p>4 Q Are you critical of him for defending your conclusions</p> <p>5 and recommendations?</p> <p>6 MR. FURMAN: Objection.</p> <p>7 A I'm neither here nor there on that. I'm critical of</p> <p>8 him not putting up a fight on tendering the royalties.</p> <p>9 Q So your criticism of him is the settlement?</p> <p>10 A Well, it appears that they laid down instead of</p> <p>11 defending what Mr. Luskin clearly believed.</p> <p>12 Q I understand. And I'm not trying to take that away</p> <p>13 from you. I understood that from your earlier</p> <p>14 testimony. That's your criticism of him?</p> <p>15 A Yeah.</p> <p>16 Q Okay.</p> <p>17 (Exhibit 72</p> <p>18 marked for identification.)</p> <p>19 Q I'm going to try to go through some of these fast,</p> <p>20 because there's only small portions of them that I'm</p> <p>21 interested in.</p> <p>22 Exhibit 72, the second email from the top is an</p> <p>23 email -- well, let's go down. The third one is,</p> <p>24 "Kevin, here's a draft. I'd like you to take a look</p> <p>25 at it."</p>

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<p style="text-align: right;">191</p> <p>1 It's a copy of the other one. And then there's</p> <p>2 your reply, "Bob, I like it. However instead of</p> <p>3 saying 'by this undertaking'," in quotes, "I recommend</p> <p>4 saying," in quotes, "by the Non-Disclosure Agreement</p> <p>5 you have identified," closed quotes.</p> <p>6 Do you remember making that recommended change to</p> <p>7 Mr. Luskin?</p> <p>8 A I have no independent recollection of it.</p> <p>9 Q And then he says, "Good suggestion. I'll incorporate</p> <p>10 and circulate." Correct?</p> <p>11 A That's what he says.</p> <p>12 Q And did he make that change?</p> <p>13 A I don't recall.</p> <p>14 (Exhibit 73</p> <p>15 marked for identification.)</p> <p>16 Q There's not much on here I want to talk about. At the</p> <p>17 top of the page is an email from Mr. Sevier to</p> <p>18 everyone conceivably on the team, including you,</p> <p>19 correct?</p> <p>20 MR. FURMAN: Objection to the reference to the</p> <p>21 team. That's --</p> <p>22 Q Did you have an understanding of what Mr. Bissonnette</p> <p>23 meant when he said, "I'd like to get a meeting of the</p> <p>24 team"?</p> <p>25 A Yeah, I think that he meant everybody that was</p>	<p style="text-align: right;">193</p> <p>1 for being faxed a copy of the Johnson reply, correct?</p> <p>2 A That's what it says, yes.</p> <p>3 (Exhibit 75</p> <p>4 marked for identification.)</p> <p>5 Q Exhibit 75 is a series of three short emails, the</p> <p>6 first one August 31 at 7:11 p.m. from you to</p> <p>7 Ms. Cheney. Do you see that one?</p> <p>8 A Yes.</p> <p>9 Q You initiated this inquiry to her, correct, as opposed</p> <p>10 to her initiating it to you?</p> <p>11 A Yes.</p> <p>12 Q And you said, "Things calm down?"</p> <p>13 A I asked the question.</p> <p>14 Q And then her reply, "I haven't heard anything which I</p> <p>15 guess is a good thing," to which you reply, "Good."</p> <p>16 A That's what it says.</p> <p>17 Q Would that communication be inconsistent with the</p> <p>18 directions that you indicated you had received from</p> <p>19 Mr. Luskin about not contacting his client unless he</p> <p>20 was there?</p> <p>21 A Yeah, but this was to Ms. Cheney.</p> <p>22 Q I know, and my question was did you consider that his</p> <p>23 directions to you in the phone call you've testified</p> <p>24 about -- which I understand he disputes, but I'll</p> <p>25 leave that to y'all to work out -- that it did not</p>
<p style="text-align: right;">192</p> <p>1 involved with the book on both -- including myself and</p> <p>2 publication people, their marketing people as well,</p> <p>3 which is obvious from here, the head of the team, Bob</p> <p>4 Luskin.</p> <p>5 Q Okay.</p> <p>6 (Exhibit 74</p> <p>7 marked for identification.)</p> <p>8 Q 74 is an email chain, still dated August 31. I want</p> <p>9 to direct your attention first to the first page. The</p> <p>10 very middle is an email from Ben Sevier to the team.</p> <p>11 Do you see that?</p> <p>12 A Yeah.</p> <p>13 Q And you're one of the members there, you're one of the</p> <p>14 persons copied on it.</p> <p>15 A I see that.</p> <p>16 Q And then he says, "The publisher's priority is to get</p> <p>17 that strong letter out ASAP. I can join a call if we</p> <p>18 need to discuss, but we have no further updates except</p> <p>19 to execute the strategy we agreed on this morning."</p> <p>20 Do you recall a phone call or meeting where there</p> <p>21 was a strategy agreed upon the morning of August 31?</p> <p>22 A As I sit here, I can't recall. I have no independent</p> <p>23 recollection.</p> <p>24 Q Then at the very top there is an email from you to</p> <p>25 Mr. Luskin and Mr. Owen where you're saying thank you</p>	<p style="text-align: right;">194</p> <p>1 include you communicating with Ms. Cheney? You were</p> <p>2 still free to do that?</p> <p>3 A Yeah, that was my understanding. I mean, since she</p> <p>4 was the voice piece of the emotional concern, just</p> <p>5 wanted to see if she had calmed down.</p> <p>6 (Exhibit 76</p> <p>7 marked for identification.)</p> <p>8 Q In Exhibit (sic) 2174, there is a couple of emails</p> <p>9 relevant to or referencing the reply to Mr. Johnson,</p> <p>10 and then on page 1 there is an email from Mr. Luskin,</p> <p>11 of August 31 at 12:04, where he is replying to the</p> <p>12 earlier email we talked about from Sevier where he</p> <p>13 says, "I agree there's not much to talk about. The</p> <p>14 letter is being prepared now. I'll review the final</p> <p>15 draft and plan to get it on its way w/in the hour."</p> <p>16 And then you replied to him and only -- well, him</p> <p>17 and Mr. Owen but not the whole team, and you just</p> <p>18 asked, "Major changes?"</p> <p>19 A Just to correct you, I just reply to him. I don't</p> <p>20 think there's --</p> <p>21 Q Oh, you're correct. I saw "Subject: Mark Owen".</p> <p>22 That's not a "cc Mark Owen". You replied just to him,</p> <p>23 lawyer to lawyer, basically saying were there any</p> <p>24 major changes made to the letter, correct?</p> <p>25 A Correct.</p>

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<p style="text-align: right;">195</p> <p>1 Q And then he says, "Trivial," and it's being prepared 2 in final, correct? 3 A Correct. 4 Q So he was keeping you informed along the way of what 5 he was going to do in response to the Jeh Johnson 6 letter? 7 A Yeah, he was, as well as other persons were including 8 me in the email chain. 9 (Exhibit 77 10 marked for identification.) 11 Q Exhibit 77 is a couple of emails again, starting with 12 the one from you August 31, 1221 (sic) at 11:57 a.m.; 13 do you see that one? 14 A Yes. 15 Q It says, "I wonder if the reason the DoD is pushing 16 this at the direction of the White House could be in 17 response to the comments about the POTUS and the 18 VEEP". 19 Do you remember sending that email with that 20 musing or inquiry in your mind? 21 A I don't have any independent recollection. 22 Q Who is that sent to? 23 A I don't recall. 24 Q Who replied to it? 25 A It's kind of difficult to tell from this, but it</p>	<p style="text-align: right;">197</p> <p>1 Q In any event, it is a communication directly to Mr. 2 Owen from you -- his reply directly to you and your 3 reply directly to him about the subject matter of the 4 Government's treatment of "No Easy Day"? 5 A Well, that's your characterization of it. 6 Q Do you disagree with that characterization? 7 A Like I said, it's my conveying to Mark Owen the 8 thoughts of a fellow military author. 9 (Exhibit 78 10 marked for identification.) 11 A And moreover, it's not really talking about him in 12 particular. It's talking about what the impetus for 13 the DoD letter is. So -- 14 Q I've just handed you Exhibit 78, but I don't remember 15 why, so just set it down and we'll move on. 16 A I think we've all done that at one point or another. 17 Q Yeah. 18 (Exhibit 79 19 marked for identification.) 20 Q I've handed you Exhibit 79. Do you recognize that as 21 an email dated August 30 to Mark Owen from you? 22 A No. This is an email from me to me, Subject: Mark 23 Owen. 24 Q You know you're right again. I thought you forwarded 25 it to Mark. You're correct.</p>
<p style="text-align: right;">196</p> <p>1 appears that Mark Owen replied. 2 Q And then what's the top one that's replying to the 3 Mark Owen reply? 4 A Well, what do you mean? It looks like a reply to Mark 5 Owen's response. 6 Q From you? 7 A Yeah. 8 Q And it has a reference subject, "Dalton Fury 9 thoughts." 10 A Oh, okay. Yeah, I do recall this. Yeah, I got an 11 email from a client who -- Dalton Fury, who I passed 12 that along. That was his comments. 13 Q So if Mr. Luskin had ordered you not to have 14 discussions with Mr. Bissonnette without his 15 participation, you violated those discussions on two 16 occasions in Exhibit 77, didn't you? 17 A Yeah, but it appears we were just conveying what 18 another author had said. 19 Q Well, the first one is not conveying what another 20 author was saying, is it? 21 A Yeah. "I wonder if the reason" -- that was from -- 22 I'm pretty sure that was from Dalton Fury. 23 Q So he was wondering and you said you were wondering? 24 A He said he was wondering and I forwarded it. It's 25 under -- "Dalton Fury thoughts" is the Subject.</p>	<p style="text-align: right;">198</p> <p>1 A No, this is just a note I made to myself. 2 Q Yep. You're right. 3 (Exhibit 80 4 marked for identification.) 5 Q You have Exhibit 80 in front of you? 6 A I do. 7 Q Do you recall sending this email to Mr. Owen? 8 A I have no independent recollection on it. 9 Q What is the subject line of the email? 10 A It says, "Attorney client privileges communication and 11 attorney work product." 12 Q And it's dated September 4 at 9:46 a.m.? 13 A Right. 14 Q And it just has the question, "How are you feeling 15 today," correct? 16 A Yeah. I just can't see how that can be 17 attorney-client protected but okay. I don't know. 18 That's what it says. 19 Q And this is, again, you communicating directly with 20 Mr. Owen after you say Mr. Luskin told you not to talk 21 to Mr. Owen unless he was present? 22 A Yeah, I think the implication was about the book, but 23 that doesn't seem to be about the book. 24 Q Why were you concerned about how he felt -- or 25 interested in how he felt on that day?</p>

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<p style="text-align: right;">199</p> <p>1 A Just an attorney inquiring with his client after a 2 rather tumultuous few days of media reaction. 3 Q So the source of your concern with regard to how he 4 felt is the subject of the representation, the trouble 5 the book was in? 6 A No, not really. I just wanted to see how he was 7 handling it at a personal level. I may be an 8 attorney, but I'm not heartless. 9 (Exhibit 81 10 marked for identification.) 11 Q Do you have Exhibit 81 in front of you? 12 A I do. 13 Q The first page of the exhibit at the top is an email 14 from Elyse Cheney to you, dated September 4; do you 15 see that? 16 A I do. 17 Q And her directions to you were, "This is confidential 18 correspondence but it really scares me. Can't share 19 with Dutton." 20 Do you know why she was worried about sharing the 21 attached correspondence with Dutton? 22 A No, I don't. I thought it odd that she sent it to me. 23 Q Why was it odd that she sent it to you? 24 A Because I didn't know what it is that she was scared 25 of.</p>	<p style="text-align: right;">201</p> <p>1 connection with operation neptune." 2 Do you remember sending that email to him? 3 A I don't specifically. I don't have an independent 4 memory of it. 5 Q And then the last email you correct the typo. You 6 said, "not for 50. I meant forfeited". 7 A Right. I sent it from my cell phone, and Siri does 8 all sorts of things with your words. 9 Q Sure. So here on September 5 there is another 10 communication from you, directly to Mr. Owen, dealing 11 with legal advice with regard to the Government's 12 threats against him, correct? 13 A I wouldn't necessarily call that legal advice, but it 14 was observations. 15 Q Legal analysis? 16 A It was my observations. 17 Q Would you not call a statement to a client, "I believe 18 this letter was meant to intimidate but likely nothing 19 more" not to be a legal analysis of the situation? 20 A It was my opinion, yeah. 21 Q And so you're giving your legal opinion to Mr. Owen 22 after you claim Mr. Luskin prohibited you from having 23 contact with him that he was not a party to? 24 A Apparently so. 25 Q So if Mr. Luskin gave you those directions, you</p>
<p style="text-align: right;">200</p> <p>1 (Exhibit 82 2 marked for identification.) 3 Q Do you have Exhibit 82? 4 A I do. 5 Q At the very bottom is the email you sent on September 6 4, asking Mr. Owen how he was feeling today. Do you 7 see that? 8 A Um-hum. 9 Q And then he responds the next day saying, "Fingers 10 crossed just want the DoD drama to be over." 11 Correct? 12 A That's what it says. 13 Q And then you responded to him six minutes later where 14 you say, "I understand. As we discussed some time 15 ago, I believe this letter was meant to intimidate, 16 but likely nothing more. However don't be surprised 17 if NCIS does an investigation and," open quote, 18 "titles", closed quote, "you. I think however that 19 will be the extent of any criminal prosecution." 20 New paragraph, "As far as the civil side goes 21 they may very well try to have the profits for 50. 22 However, the Government still has to be able to prove 23 that the book contains classified information or that 24 you signed a special access program/sensitive 25 apartment information non-disclosure Agreement in</p>	<p style="text-align: right;">202</p> <p>1 violated them? 2 A I guess he should fire me. 3 (Exhibit 83 4 marked for identification.) 5 Q Do you recognize Exhibit 83 as a memo from Diane Bauer 6 in your office to you? 7 A I do. 8 Q And the date on it is September 6, 2012? 9 A Yep. 10 Q Is this the memo she sent in response to your request 11 that we marked earlier, for her to do some urgent 12 research on behalf of Mr. Bissonnette? 13 A Yeah, I don't know if it's in response to that email 14 or not, because I think I had several emails with her, 15 but she did research and write this at my request. 16 Q Okay. And sent it to you on September 6, 2012? 17 A That's what it's dated, yeah. 18 Q Is it -- since you don't -- well, I don't know if you 19 remember or not. Is it your recollection that you got 20 this shortly after you requested it? 21 A I got it within a reasonable period of time 22 afterwards. 23 Q I think it's actually the same day, but I may be 24 remembering it wrong. Would that be consistent with 25 your memory, that it was within a day or two of your</p>

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<p style="text-align: right;">203</p> <p>1 requesting it?</p> <p>2 A If it was the same day, that would not be the Diana</p> <p>3 Bauer that I know. So I think -- she's very thorough,</p> <p>4 but she's also not the fastest of researchers; so I</p> <p>5 don't believe it was within 24 hours of me giving her</p> <p>6 the assignment.</p> <p>7 Q Okay.</p> <p>8 A And I think this was done at Mr. Luskin's request.</p> <p>9 Q Let me show you what I've marked as Exhibit 84.</p> <p>10 (Exhibit 84</p> <p>11 marked for identification.)</p> <p>12 Q Do you recognize Exhibit 84?</p> <p>13 A It looks like it's the same memo, but --</p> <p>14 Q Except this time it's from you to the file, isn't it?</p> <p>15 A Right.</p> <p>16 Q Does it appear to you that you took her research and</p> <p>17 her memo and put your name on it and then put it in</p> <p>18 the file?</p> <p>19 A I don't know what it appears.</p> <p>20 Q Do you have any other explanation for why you would</p> <p>21 take Diane Bauer's work product and put your name on</p> <p>22 it and then put it in the file?</p> <p>23 MR. FURMAN: Objection. It's a law firm's work</p> <p>24 product. She works for a law firm.</p> <p>25 A Right, and moreover you're presuming that I took her</p>	<p style="text-align: right;">205</p> <p>1 her is dated September 6 at 5:23 -- September 5 at</p> <p>2 5:23 p.m.</p> <p>3 A Yeah.</p> <p>4 Q So in point of fact, she got it back to you almost</p> <p>5 immediately, didn't she?</p> <p>6 A She got it back to me, and it looks like she worked</p> <p>7 through the night to do it. Wow. I take it back what</p> <p>8 I said about her.</p> <p>9 Q Is there any reason why this research was being done</p> <p>10 after the book had been written and released, as</p> <p>11 opposed to before?</p> <p>12 A Well, if you look at the first email on the very back,</p> <p>13 there's an email from Mr. Luskin, requesting</p> <p>14 information about it.</p> <p>15 Q Right.</p> <p>16 A So --</p> <p>17 Q And if that's the only -- let me -- is it your belief</p> <p>18 that Mr. Luskin requested this research and your law</p> <p>19 firm provided it?</p> <p>20 A He requested the research in that email. He asked me</p> <p>21 if I was familiar with royalty procedures; and while I</p> <p>22 was generally, I wanted to have some specifics,</p> <p>23 because attorneys tend to want to have exact answers</p> <p>24 to their exact questions, and that's why the email</p> <p>25 was -- I'm sorry -- that's why the research was done.</p>
<p style="text-align: right;">204</p> <p>1 work. Clearly there's a difference. There must be a</p> <p>2 difference, because there were things that I didn't</p> <p>3 like about what she wrote or I did further research</p> <p>4 on; so yeah, there's differences in it.</p> <p>5 So in any event, I don't know -- I don't recall</p> <p>6 as I sit here why that was done, but I think there's</p> <p>7 differences, and it's probably because I was doing a</p> <p>8 revision. Since she did the work for me, I felt that</p> <p>9 I was entitled to do that.</p> <p>10 (Exhibit 85</p> <p>11 marked for identification.)</p> <p>12 Q Do you have 85 in front of you?</p> <p>13 A I do.</p> <p>14 Q If you go back three pages, it has attached the Diane</p> <p>15 Bauer memo that was marked as Exhibit 83, I believe,</p> <p>16 correct?</p> <p>17 A It looks that way.</p> <p>18 Q But attached to the front of that is a series of</p> <p>19 emails between you and her, correct?</p> <p>20 A Yeah. I don't -- well, I see that, but I don't know</p> <p>21 if it's -- I don't see where -- there it is. That's</p> <p>22 where she attached it to the email exchange. Got it.</p> <p>23 Yep, I see that.</p> <p>24 Q And if you look down at the bottom of the first page,</p> <p>25 there is a request from you -- an email from you to</p>	<p style="text-align: right;">206</p> <p>1 But prior to this, I had, like I said, from my</p> <p>2 experience understood the forfeiture process, but I</p> <p>3 knew there was also cases out there -- recent cases</p> <p>4 where there were -- the Government had taken various</p> <p>5 positions on forfeitures, and I wanted to see</p> <p>6 whether -- rather, confirm my memory that the CIA was</p> <p>7 much harsher with prosecuting both forfeitures</p> <p>8 criminally than the DoD was. I mean, if you look at</p> <p>9 the bottom of page 2, I give her a general overview.</p> <p>10 And then I knew from my previous readings that these</p> <p>11 cases were at issue. So I asked her to look at those</p> <p>12 in particular.</p> <p>13 (Exhibit 86</p> <p>14 marked for identification.)</p> <p>15 Q Let's continue to follow that thread just for a</p> <p>16 minute. You have Exhibit 86 in front of you?</p> <p>17 A Right.</p> <p>18 Q And it has at the bottom of page 1 her September 6</p> <p>19 memo -- email, attaching her memo, correct?</p> <p>20 A Yes, that's correct.</p> <p>21 Q And then the next day at 7:48 -- I presume a.m. --</p> <p>22 she -- I'm sorry. At -- skipping one here.</p> <p>23 September 6 at 4:51 p.m., you replied to her,</p> <p>24 "Please do continue to look." Correct?</p> <p>25 A Right. In answer to her previous email, I'm still</p>

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<p style="text-align: right;">207</p> <p>1 looking to see if there are any other materials out</p> <p>2 there to help us.</p> <p>3 Q And then she says, "I will. Was the memo helpful?"</p> <p>4 And then you reply on September 7, "Do you think</p> <p>5 I can make these distinctions between our situation</p> <p>6 and the situations in this case?"</p> <p>7 A "In these cases," correct.</p> <p>8 Q "In these cases". And then you list three</p> <p>9 distinctions, correct?</p> <p>10 A It appears so, yeah; first, second, and third. Yep.</p> <p>11 Q And so prior to asking her to do this research, you</p> <p>12 were not aware of whether you could make these</p> <p>13 distinctions between Mr. Owen and the results in the</p> <p>14 case law that were negative to authors?</p> <p>15 A Well, I wouldn't say that I was not aware. I wanted</p> <p>16 her to confirm my remembrance and experience, and</p> <p>17 that's what I asked her to do.</p> <p>18 Q Was your remembrance and experience that you could</p> <p>19 make these distinctions?</p> <p>20 A Yes.</p> <p>21 Q Okay. And did her continued research confirm that for</p> <p>22 you?</p> <p>23 A You know, I don't recall. I think she did do further</p> <p>24 research, but as I sit here, I don't remember what</p> <p>25 exactly she came up with.</p>	<p style="text-align: right;">209</p> <p>1 Information Act requests in the hope of strengthening</p> <p>2 Mr. Bissonnette's position, vis-a-vis, the Government</p> <p>3 and the publication of "No Easy Day"?</p> <p>4 A I think it was my suggestion and Mr. Luskin's</p> <p>5 direction to do so, yeah.</p> <p>6 (Exhibit 89</p> <p>7 marked for identification.)</p> <p>8 Q Do you have Exhibit 89, which it purports to be a</p> <p>9 letter from you from (sic) Susan Cugler, responding to</p> <p>10 her letter of September 12, denying your Freedom of</p> <p>11 Information Act request?</p> <p>12 A Right and asking for reconsideration, I think.</p> <p>13 (Exhibit 90</p> <p>14 presented to the witness.)</p> <p>15 Q And then Exhibit 90 is a document -- and I presume it</p> <p>16 is an email, but I don't have the heading on it. But</p> <p>17 it is addressed to Ms. Andorfer (sic) to you,</p> <p>18 talking -- telling her that you're writing in response</p> <p>19 to a September 18 phone call concerning your September</p> <p>20 7 letter and the requirement of agreeing to incur a</p> <p>21 minimum of 500 in costs, correct?</p> <p>22 A Right. Susan Aldorfer, and she's with the Office of</p> <p>23 Security Support, but it's resident in the White</p> <p>24 House. I mean, that's what's up there.</p> <p>25 Q And all of this is done in furtherance of your efforts</p>
<p style="text-align: right;">208</p> <p>1 (Exhibit 87</p> <p>2 marked for identification.)</p> <p>3 Q And then is the top of Exhibit 87 her reply to you,</p> <p>4 "Those are certainly distinctions to make. It sounds</p> <p>5 like we need to confirm exactly what documents he did</p> <p>6 or did not sign. I saw an article online today which</p> <p>7 said that a charitable organization has turned down</p> <p>8 his offer to donate money to the organization."</p> <p>9 Did you get that email from her?</p> <p>10 A It appears to be so.</p> <p>11 Q Did you get any other follow-up that you recall on</p> <p>12 whether you could make the three distinctions that</p> <p>13 your memory told you could be made?</p> <p>14 A As I sit here today, I don't recall.</p> <p>15 (Exhibit 88</p> <p>16 marked for identification.)</p> <p>17 Q Let me show you Exhibit No. 88, which purports to be a</p> <p>18 letter from you to the Department of Defense,</p> <p>19 requesting information under the Freedom of</p> <p>20 Information Act, dated September 7.</p> <p>21 Do you recall sending that letter?</p> <p>22 A Yeah, I don't know if this one exactly. This could</p> <p>23 have been a draft. I don't know. I mean, yeah,</p> <p>24 generally I recall doing this.</p> <p>25 Q Okay. And was it your idea to send Freedom of</p>	<p style="text-align: right;">210</p> <p>1 to get information under the Freedom of Information</p> <p>2 Act that would be of benefit to Mr. Bissonnette?</p> <p>3 A At Mr. Luskin's direction.</p> <p>4 (Exhibit 91</p> <p>5 marked for identification.)</p> <p>6 Q Do you have Exhibit 91 in front of you?</p> <p>7 A I do.</p> <p>8 Q It is a series of emails, some of them to multiple</p> <p>9 people, but I'm interested primarily in the ones on</p> <p>10 the front page.</p> <p>11 In the middle of the page is a September 8 email</p> <p>12 from Mr. Owen, talking about how they are reading his</p> <p>13 version of the story. Do you see that?</p> <p>14 A Um-hum.</p> <p>15 Q And then above it is a September 8 email from you,</p> <p>16 asking, "Was the mission going after Private Burgdahl</p> <p>17 a special access program operation?"</p> <p>18 A Yeah.</p> <p>19 Q And then do you know who that was sent to?</p> <p>20 A I presume it was sent to Mark Owen, because that's</p> <p>21 what the header says.</p> <p>22 Q And then he replies "Nope." Correct?</p> <p>23 A Right, but it could have been sent to the group,</p> <p>24 because as you can see, the email chain earlier is</p> <p>25 all -- yeah, this is kind of funky in that it looks</p>

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<p style="text-align: right;">211</p> <p>1 like it's being edited or something. I don't know. 2 But at a minimum, it went to him. 3 Q And if the others weren't copied on it, then once 4 again, this was you communicating with him in 5 violation of the directives that you indicated you 6 received from Mr. Luskin? 7 A Yeah, after he wrote to me. Apparently so. 8 Q And why is it that on September 8, after the book is 9 already out, you were asking for the first time 10 whether the mission involving Private Burgdahl was a 11 Special Access Program? 12 A Well, that's your characterization of it. It was the 13 first time, in fact, we had discussions about all of 14 that information that was in his book. 15 Q Okay. 16 A And I was asking him to confirm. 17 Q That's a fair question. Let me ask this then. 18 Why were you asking him on September 8 whether 19 the mission going after Burgdahl was an SAP Program? 20 A Because if you read the foregoing email, it talks 21 about one of those issues. The Burgdahl issue was 22 right there in the email from Mark Owen, and I'm just 23 confirming what he told me previously. 24 Q And when did he tell you previously whether the 25 Burgdahl mission was a SAP Operation?</p>	<p style="text-align: right;">213</p> <p>1 was written by Peter Blabber, my client, and no we did 2 not send it for official review by DoD." 3 Did you write that? 4 A As I sit here today, I don't have any independent 5 recollection of that. 6 Q Is that a true statement? 7 A It's not a complete statement. 8 Q Is it true? 9 A It's not a complete statement, so therefore it's not 10 true. 11 Q And then there is a list of three other books: 12 Dick Haney, Inside Delta -- not vetted. 13 Lieutenant Boykin, Never Surrender -- not vetted. 14 Charlie Beckwith, Delta Force -- not vetted. 15 Why did you list these three books and then put 16 "not vetted" beside them? 17 A Because it was my opinion that what was contained in 18 them was clearly not vetted, because it would not have 19 been in the books. 20 Q I don't understand. Are you saying in your opinion, 21 these books contained information that if they had 22 been vetted the review process would have removed? 23 A Yes. 24 Q Okay. So you're not saying, "These are three authors 25 I represented and they didn't vet the process."</p>
<p style="text-align: right;">212</p> <p>1 A No, it was not a SAP Operation. 2 Q Whether it was. 3 A Oh, okay. When I reviewed the manuscript, we had a 4 telephone conversation at length. So it was either 5 the first or the second telephone conversation. I 6 think it was the first conversation in June, not the 7 second one, because Kevin Maurer was on the line as 8 well; and the second conversation in June was just 9 Mark Owen and I. 10 (Exhibit 92 11 marked for identification.) 12 Q Do you have Exhibit 92 in front of you? 13 A I do. 14 Q There is an email in more or less the middle of the 15 first page from Mark Owen -- from Mark Owen to a group 16 of people that includes you, saying, "Hey guys, Was 17 just browsing through Amazon checking out all the SEAL 18 or DELTA books and I ran across this one." And then 19 it continues on. 20 Do you remember getting that email around 21 September 6? 22 A I'm sorry. As I sit here, I have no independent 23 recollection. 24 Q Then there is a reply from you to the same original 25 recipients where you say, "The Men, the Mission and Me</p>	<p style="text-align: right;">214</p> <p>1 You're saying, "These are books I have read. I don't 2 think they were vetted because they have information I 3 think should not be in there." 4 A That's correct. 5 Q Okay. 6 A It was speculation on my part. 7 Q Speculation as to whether they were vetted? 8 A Yes. 9 Q Okay. 10 (Exhibit 93 11 marked for identification.) 12 Q Exhibit 93 is -- starts with an email from Mark 13 Fabiani that forwards a message from Rowan Scarborough 14 III, and then has a reply from you and -- a reply from 15 Fabiani, a reply from you, and then a reply from 16 Luskin. Do you remember this email exchange? 17 A As I sit here, I don't have an independent 18 recollection of it. 19 Q Do you remember -- let me ask you this. 20 In the email in the middle of the page dated 21 September 11 at 1:27 p.m. from you, it says, "DoD 22 General Counsel attached a DD Form 1847-1 to his 23 warning letter to MO which lists certain SAP's. The 24 document was signed in 2007 -- 4 years before Op. Nep 25 Spear was conceived and executed."</p>

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<p style="text-align: right;">215</p> <p>1 By that language were you intending to say that</p> <p>2 the 2007 document Mr. Owen had signed could not apply</p> <p>3 to Operation Neptune Spear because it preceded the</p> <p>4 operation by four years?</p> <p>5 A I wasn't saying it could not. What I was saying was</p> <p>6 that -- observing a fact that it was four years before</p> <p>7 the operation was conceived of and executed, so --</p> <p>8 Q What's the relevance of that timing?</p> <p>9 A Well, if you would let me finish, I would say it's</p> <p>10 likely that it was not in connection with it. It</p> <p>11 wasn't a continuous mission, as far as I know of facts</p> <p>12 on the table. Operation Neptune Spear was conceived</p> <p>13 of and executed in 2011, so it doesn't make sense that</p> <p>14 a document signed in 2007 would have effect over</p> <p>15 Neptune Spear.</p> <p>16 The document the Government provided has the</p> <p>17 compartmented programs on it that he was read on to.</p> <p>18 It's unusual, unless you are in that operation and</p> <p>19 it's an ongoing operation for it to extend that many</p> <p>20 years and, moreover, to cover these two different,</p> <p>21 separate operations. So that was my conclusion.</p> <p>22 Q Okay. And somewhere in there there is a legal premise</p> <p>23 or legal analysis that I know nothing about, and</p> <p>24 forgive me if I flounder a little bit here, but when</p> <p>25 you sign -- when one signs a document like the</p>	<p style="text-align: right;">217</p> <p>1 additional information on it and list all of the</p> <p>2 programs that one is read on, but there's nothing</p> <p>3 listed on that one in 2011.</p> <p>4 So, by deductive reasoning, the 2011 program is</p> <p>5 not included in that DD Form 1847-1.</p> <p>6 Q All right.</p> <p>7 (Exhibit 94</p> <p>8 marked for identification.)</p> <p>9 Q Do you have Exhibit 94, sir?</p> <p>10 A I do.</p> <p>11 Q It is a continuation of the memo that was 93. I</p> <p>12 didn't read through them, but there was an email from</p> <p>13 you, said you would defer to Bob on what could be said</p> <p>14 on background. And then Mr. Luskin says he'll defer</p> <p>15 to you. But then the next email is the one that I'm</p> <p>16 interested in, on the first page from you to</p> <p>17 Mr. Luskin and Mr. Fabiani, dated September 11 at 5:58</p> <p>18 p.m. where you say, "Wait. That assumes that there</p> <p>19 was a Bin Laden SCI Program, which MO does not recall</p> <p>20 being Read On to and which we cannot otherwise</p> <p>21 confirm."</p> <p>22 If one wanted to know whether a program was an</p> <p>23 SCI program, what's the best way to find out?</p> <p>24 A Go to the Security Manager for the program. The</p> <p>25 access programs have code names which are not</p>
<p style="text-align: right;">216</p> <p>1 document signed by Mr. Bissonnette in 2007 that lists</p> <p>2 certain SAP programs or operations, does that</p> <p>3 agreement cover only those listed and would not cover</p> <p>4 a future SAP program?</p> <p>5 A The Standard Form 312 is a generalized confidential</p> <p>6 Non-Disclosure Agreement, and that is more or less a</p> <p>7 continued obligation for all matters that are</p> <p>8 classified. It's not mission specific. By its very</p> <p>9 nature, Sensitive Compartmented Operation Programs are</p> <p>10 mission specific. They're compartmented, meaning that</p> <p>11 not everyone who is involved knows everything about</p> <p>12 the mission; they know their slice.</p> <p>13 And because of their sensitive nature, those</p> <p>14 persons who are signed in and read in to that program,</p> <p>15 that's documented that they're signed in and they are</p> <p>16 debriefed. And we have seen in this case both the</p> <p>17 signing in in 2007 and a debriefing of</p> <p>18 Mr. Bissonnette.</p> <p>19 On there, there is two programs that were listed,</p> <p>20 and he was debriefed on two programs. It was -- both</p> <p>21 of them were executed in 2007 and no programs were</p> <p>22 executed in 2011. So that's my conclusion, is that</p> <p>23 that -- by deductive reasoning, that Operation Neptune</p> <p>24 Spear was not included on that SCI program. You can</p> <p>25 amend that SCI Non-Disclosure Agreement and add</p>	<p style="text-align: right;">218</p> <p>1 classified, and that's -- so Operation Neptune Spear</p> <p>2 is an unclassified code name for the mission. I don't</p> <p>3 know what the real mission name was. They don't</p> <p>4 release that. If it's a Special Access Program, they</p> <p>5 won't tell you that. But they'll be able to decipher</p> <p>6 what it is from an inquiry. Whether they answer you</p> <p>7 or not or have to answer you or not, that's another</p> <p>8 matter. But normally, if it's in relation to a</p> <p>9 security clearance matter, you'll get an answer</p> <p>10 eventually.</p> <p>11 Q Would you agree with me that whether something is or</p> <p>12 is not an SCI program, it's not something someone</p> <p>13 would want to guess at?</p> <p>14 A Yeah, I would agree with you that one should not guess</p> <p>15 at it. One should allow their attorney to talk to</p> <p>16 their Security Officer to find out for sure.</p> <p>17 (Exhibit 95</p> <p>18 marked for identification.)</p> <p>19 Q Do you have Exhibit 95 now?</p> <p>20 A I do.</p> <p>21 Q This at the top -- and again, there's an attachment to</p> <p>22 it I'm concerned only about. The top of the first</p> <p>23 page where you are -- I guess it doesn't say so, but</p> <p>24 you must be emailing Ms. Bauer here, because she</p> <p>25 replies on September 10. You say, "Please look for</p>

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<p style="text-align: right;">219</p> <p>1 cases addressing this issue in your research and keep 2 me posted on your progress." 3 And then you quote the concern that was expressed 4 in the email underneath that from you to Mr. Luskin, 5 which says, "I'm a little concerned about the thought 6 that someone from the CIA will sign an affidavit 7 stating they inadvertently failed to have all of the 8 operators sign a CIA non-disclosure but gave them a 9 verbal warning telling them that the actionable 10 intelligence was derived from a SAP. I haven't found 11 any case law on it yet. But if the DoJ wanted to set 12 a precedence and use a lot of MO's royalties on legal 13 fees, that would be the way to do it," closed quotes. 14 And so in this email you were asking Ms. Bauer to 15 do the research on that subject, correct? 16 A I was asking her to see if she could find case law on 17 anything in connection with that, and that being that 18 there was no formal document signed but somebody came 19 forward with an affidavit and said, "Yea, verily, I 20 have briefed everyone at this level." 21 Q And prior to this, did you -- you knew Mr. Bissonnette 22 had told you he had not signed anything, correct? 23 A That's correct. 24 Q Did you give any concern to whether this fact pattern 25 might have been in existence; that is to say, some CIA</p>	<p style="text-align: right;">221</p> <p>1 Q Okay. Why would he have recalled this? Had you 2 discussed this with him before you did it? 3 A Well, this was part of that group telephone call. I 4 believe it was a telephone call, or it could have been 5 a group email. In any event, Mr. Luskin asked me to 6 do this. And this bothers me about this, because it 7 looks like I only emailed it to him, but I'm pretty 8 sure that I always copied other people on this, 9 because they had asked me to do this. 10 But in any event, it appears that in compliance 11 with the request to send the FOIA, I did, and this was 12 the first comeback or the second comeback when they 13 said, "Well, you have to" -- 14 Q I apologize. And wouldn't it be appropriate to have 15 replied only to him since you're asking him for 16 permission to incur the copying expense? 17 MR. FURMAN: There's a copy to Elyse Cheney, and 18 I don't know from the middle of the email who Kevin 19 Podlaski emailed it. It's not even clear that he 20 emailed Mark Owen. 21 A That's what I'm saying. I'm not sure I just sent it 22 to him, although I addressed it to him, since he was 23 the client. But, you know, I don't know. 24 Q Is there any other Mark you would be sending this 25 email to --</p>
<p style="text-align: right;">220</p> <p>1 agent says, "We talked to them even though they didn't 2 sign anything?" 3 A I asked him specifically if anyone had -- during their 4 briefings when they were in isolation had come in and 5 said to them that this was a Special Access Program or 6 Sensitive Compartmented Information Program, and he 7 said, "I don't think so. I don't remember. I don't 8 believe so." 9 Q And Ms. Bauer tells you on September 13, three days 10 later, she can't find anything on that subject? 11 A Which is not unusual, because -- well, people either 12 fight it or they don't. 13 (Exhibit 96 14 marked for identification.) 15 (Discussion held off the record.) 16 Q Do you have Exhibit 96 in front of you? 17 A I do have it in front of me, yes. 18 Q The top -- the second email in the two-email string 19 here is dated September 18 from you, apparently to Mr. 20 Owen. Do you remember sending this email? 21 A I have no independent recollection of it. 22 Q In this email you say to Mr. Owen, "As you may recall, 23 I sent FOIA requests on your behalf requesting to 24 receive their reviews of 15 or so books." 25 A I read it.</p>	<p style="text-align: right;">222</p> <p>1 A No. 2 Q -- asking for permission to incur the expense? 3 A No. 4 Q So you sent it to Mark Owen, right? 5 A I sent it at least to Mark Owen. I'll say that. 6 Q And then Mark replies with a copy to Elyse saying, 7 "Yes I agree and thanks again!!" 8 A Apparently so. 9 Q And if no one else was copied on your email, then this 10 would be yet one more example of you communicating 11 with Mr. Owen contrary to the directions you say 12 Mr. Luskin gave you? 13 A No. It's not about the book. It's about the Freedom 14 of Information Act matters. 15 Q Isn't the Freedom of Information Act about the book? 16 A No, the Freedom of Information Act is about other 17 authors and whether their books were vetted. 18 Q Why would Mr. Bissonnette want to pay for copies of 19 information about whether other authors had their 20 books vetted? 21 A I don't know. You would have to ask him that. 22 Q But you recommended it? 23 A As we previously discussed, it was part of the group 24 session, and we were discussing about ways to support 25 Mark Owen's and Mr. Luskin's defense that he was being</p>

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<p style="text-align: right;">223</p> <p>1 treated unfairly from -- by the Department of Defense</p> <p>2 or Department of Justice, from other authors who had</p> <p>3 written books and had perhaps not submitted their</p> <p>4 books for vetting and nothing happened to them. So</p> <p>5 that's why.</p> <p>6 Q Didn't you tell me earlier that this was your idea?</p> <p>7 A I suggested it.</p> <p>8 (Exhibit 97</p> <p>9 marked for identification.)</p> <p>10 Q Let me show you what I've marked as Exhibit 97.</p> <p>11 There's a September email -- September 18 email from</p> <p>12 Mark Owen to you where he says, "I'd love to call</p> <p>13 these guys!!!"</p> <p>14 Do you know what that YouTube video is about?</p> <p>15 A I have no idea. I don't recall, as I sit here.</p> <p>16 Q And then you replied to him, "If your publisher</p> <p>17 doesn't have a problem with it I don't as long as you</p> <p>18 don't let them record you or take photos of you,"</p> <p>19 correct?</p> <p>20 A That's what it says.</p> <p>21 Q And the Subject on your reply is "Unauthorized</p> <p>22 interview". Does that refresh your recollection as to</p> <p>23 what any of this is about?</p> <p>24 A No. I'm sorry.</p> <p>25 (Discussion held off the record.)</p>	<p style="text-align: right;">225</p> <p>1 then you say, "With your permission I will call him</p> <p>2 and find out what he proposes."</p> <p>3 Mr. Bissonnette then replies the same day just a</p> <p>4 few minute later, "Good copy!!!! Go ahead and call</p> <p>5 see what they have to say."</p> <p>6 Do you recall asking Mr. Bissonnette for</p> <p>7 permission to make that call and receiving directions</p> <p>8 to do so?</p> <p>9 A I don't have any independent recollection of that.</p> <p>10 Q Did you make that call?</p> <p>11 A I don't remember, but I must have. I don't know.</p> <p>12 (Exhibit 99</p> <p>13 marked for identification.)</p> <p>14 Q Do you have Exhibit 99 in front of you?</p> <p>15 A I do.</p> <p>16 Q And the top of that is an email from Mr. Luskin to</p> <p>17 you, dated September 28 at 9:23 a.m., and it</p> <p>18 references an attached term sheet.</p> <p>19 Do you recall receiving this email?</p> <p>20 A I don't have any independent recollection of it.</p> <p>21 Q Do you recall receiving an email with a term sheet</p> <p>22 attached?</p> <p>23 A I don't recall independently, other than what's in</p> <p>24 front of me here.</p> <p>25 Q His second paragraph says, "Elyse said you had, at</p>
<p style="text-align: right;">224</p> <p>1 (Exhibit 98</p> <p>2 marked for identification.)</p> <p>3 (Recess)</p> <p>4 MR. JOHNSTON:</p> <p>5 Q Do you have Exhibit 98, sir?</p> <p>6 A Yes.</p> <p>7 Q At the bottom of Exhibit 98 on the first page is an</p> <p>8 email from Donald Nicholson to you, dated September</p> <p>9 24th.</p> <p>10 (Pause)</p> <p>11 Q Do you remember this email?</p> <p>12 A As I sit here, I don't independently recollect this</p> <p>13 email.</p> <p>14 Q Do you remember receiving a response to Freedom of</p> <p>15 Information Act requests on or about September 24?</p> <p>16 A No, I don't have any independent recollection.</p> <p>17 Q Then there appears to be an email from you to Mr. Owen</p> <p>18 apparently, because he replies, and you wrote to him,</p> <p>19 "The office of Security and Policy Review (OSPR) sent</p> <p>20 this to me today informing me that the FOIA request we</p> <p>21 sent to it for documents related to the OSPR's review</p> <p>22 of books/manuscripts written by former military</p> <p>23 members is delayed."</p> <p>24 A Yeah, I read it.</p> <p>25 Q Okay. As you read, he suggests that you call him and</p>	<p style="text-align: right;">226</p> <p>1 some point, prepared a list of former seals/delta</p> <p>2 force guys who had written books. Can you share that</p> <p>3 w/me, please. Do you know, or does this list reflect,</p> <p>4 whether any submitted their manuscripts for pre pub</p> <p>5 review."</p> <p>6 Do you remember Mr. Luskin asking you for that</p> <p>7 information in late September?</p> <p>8 A No, I don't recall that.</p> <p>9 Q Did you provide it to him?</p> <p>10 A I don't recall.</p> <p>11 (Exhibit 100</p> <p>12 marked for identification.)</p> <p>13 Q Do you have Exhibit 100 in front of you?</p> <p>14 A I do.</p> <p>15 Q And it is an email at the bottom dated October 5 from</p> <p>16 you to Mr. Bissonnette, saying, "Mark, is anything</p> <p>17 going on?" Oh, I'm sorry. I skipped one.</p> <p>18 There's one of October 3rd from you to Mr. Owen</p> <p>19 that says, "Subject: This is the pinnacle of success.</p> <p>20 You're up there with Justin Bieber's autobiography and</p> <p>21 JK Rolling's latest book. The pinnacle of success!"</p> <p>22 Do you remember sending that email to Mr. Owen?</p> <p>23 A Yeah, I think I was in a Kroger and I saw in a book</p> <p>24 aisle and there his book was in the middle of the</p> <p>25 aisle. So I remember sending him that, yeah.</p>

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<p style="text-align: right;">227</p> <p>1 Q And then two days later you send another one where you 2 say, "Mark, is anything going on?" Correct? 3 A I did. 4 Q And a couple of hours it looks like after -- almost 5 two hours after you sent it, he replies to you, "Not 6 that I know of! DoD is talking back and forth with 7 Luskin but it seems they want to negotiate a 8 reasonable settlement that allows them to back away 9 without looking bad." 10 Do you recall receiving that update on the status 11 of the negotiations from Mr. Owen? 12 A I don't recall. 13 Q And then you replied the same day back to him that 14 says, "I know, Bob Luskin sent me the list of demands. 15 I sent you a blind copy of my thoughts on it. Bottom 16 line: I think you should do nothing except apologize 17 and maybe donate some money to charity of DoD's 18 choice! Did you get my photos?" 19 And that email is dated October 5, 2012, correct? 20 A Yes. 21 Q When it says, "I sent you a blind copy of my thoughts 22 on it," what does that mean? 23 A As I sit here today, I don't recall. 24 Q Does that mean that you sent it to him and not to 25 Luskin?</p>	<p style="text-align: right;">229</p> <p>1 of that and they may not be in the "cc" block. 2 They're in the "bcc" block, so they receive a copy of 3 your communications. But it doesn't mean that it was 4 sent only to Mr. Owen. I think it means it was sent 5 to both of them, primarily to Mr. Luskin and then 6 blind copy to Mr. Owen. That's what I would presume 7 it to be. 8 Q I understand your point. So your belief is that you 9 sent your observations to Mr. Luskin and blind copied 10 on that transmission Mr. Bissonnette, so he would have 11 received it, but Mr. Luskin would not know that you 12 had sent it to him? 13 A I don't know that for sure, but that's what blind 14 copying would mean to me. 15 Q Okay. I understand now. Let me show you Exhibit 101. 16 (Exhibit 101 17 marked for identification.) 18 Q This is an email dated November 13 to you, with a 19 reference to Freedom of Information ACT request and a 20 number. "Dear Mr. Podlaski, the FBI" and then they 21 respond and say, "Your request will be processed." 22 Do you recall receiving that notification that a 23 Freedom of Information Act request to the FBI would be 24 processed? 25 A No, I really don't.</p>
<p style="text-align: right;">228</p> <p>1 A As I sit here today, I don't recall. 2 Q And then he replies to you still on October 5, "I got 3 the pictures!!! Thank you!!!" 4 Do you know what pictures are being talked about? 5 A I don't know for sure, but I think it's the pictures 6 of his book in Kroger's. 7 Q Okay. "As for the demands they are still working 8 through the list but none of them seem too crazy so 9 that's a good thing." 10 Do you recall that communication? 11 A I don't have an independent recollection, no. 12 Q This would, again, be communications between you and 13 him about the subject of his books and his Government 14 problems over the book that would be in violation of 15 Mr. Luskin's directions, as you understood them, for 16 you to not discuss the matter with him without 17 Mr. Luskin present, correct? In part? 18 A Yeah, in part we did discuss the DoD negotiations. 19 Q And would you agree with me that if your reference to 20 sending him a blind copy of your thoughts means you 21 excluded Mr. Luskin, that would really be in violation 22 of what you say Mr. Luskin told you, correct? 23 A No, I don't agree with your premise and your 24 presumption. Blind copying normally means that you 25 are talking to one person and you send a person a copy</p>	<p style="text-align: right;">230</p> <p>1 Q Let me ask you to look at the bottom of page 1, and 2 earlier there is a reference to an earlier 3 transmission by minutes from you to FOIPA Request. 4 A I'm sorry. What are you referring to by minutes? 5 Q Yeah. Look up at the top of David Sobonya's email to 6 you, November 13, 10:49 a.m., right? 7 A Correct. 8 Q Now go down and look at your transmission. 9 A I see what you're saying. 10 Q It's November 13, 10:41. 11 A Yeah, I just didn't understand what you said. I got 12 it. 13 Q Sure. So it appears you sent it, and eight minutes 14 later he replied and said it's being processed, 15 correct? 16 A Correct. 17 Q And so did you on November 13 send the FBI a request 18 for documents under the Freedom of Information Act, as 19 reflected in Exhibit 101? 20 A It appears to be so. 21 Q And this is essentially the same request that you sent 22 in September, just to a different entity, correct? 23 A I would have to compare them, but they appear to be 24 similar. 25 Q And this was another request that you sent on behalf</p>

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<p style="text-align: right;">231</p> <p>1 of or for the benefit of Mr. Bissonnette?</p> <p>2 A Per the direction of Mr. Lusk, correct.</p> <p>3 (Exhibit 102</p> <p>4 marked for identification.)</p> <p>5 Q Do you have Exhibit 102 in front of you?</p> <p>6 A I do.</p> <p>7 Q This appears to be an email exchange between you and</p> <p>8 Kevin Maurer, the co-writer. On January 8, 2013 you</p> <p>9 wrote, "I just finished reading The Lions of</p> <p>10 Kandahar."</p> <p>11 What is that book? What's that book about?</p> <p>12 A Oh, it's about a -- I testified earlier that</p> <p>13 apparently Rusty Bradley, he was a Special Forces</p> <p>14 ODA -- Operational Detachment Alpha -- Commander for</p> <p>15 the 5th Special Forces Group, and he was in</p> <p>16 Afghanistan and wrote a book about his experiences.</p> <p>17 And actually in that regard, the Command -- I think it</p> <p>18 was General Mulholland -- asked him to write it. And</p> <p>19 it was a pretty good, fast-moving book.</p> <p>20 Q And you may have said this, but was Mr. Maurer a</p> <p>21 co-writer on it?</p> <p>22 A Yeah, he was the co-writer.</p> <p>23 Q All right. And then you ask, "How are things going?</p> <p>24 Haven't heard from MO or Elyse in quite a while. I</p> <p>25 presume the storm has calmed down? Let me know."</p>	<p style="text-align: right;">233</p> <p>1 same day, May the 8th, saying, "Alex, please tell me</p> <p>2 why you need these documents."</p> <p>3 A Yeah, it looks like it was my response.</p> <p>4 Q And then he replied, "Mark has requested them. My</p> <p>5 understanding is that he paid the associated</p> <p>6 administrative costs (copying, etc.) in advance back</p> <p>7 in September."</p> <p>8 A Yeah. That's not the way it works.</p> <p>9 Q No, it's not. But why were you asking why Alex needed</p> <p>10 the documents?</p> <p>11 A Because I didn't work for Alex and I didn't work for</p> <p>12 Elyse. I worked for Mr. Owen and then was working</p> <p>13 with Mr. Lusk.</p> <p>14 Q Okay.</p> <p>15 (Exhibit 104</p> <p>16 marked for identification.)</p> <p>17 Q 104 is an email from Krista Witmer. That's the woman</p> <p>18 who worked at Carson Boxberger for you -- or maybe for</p> <p>19 others, correct?</p> <p>20 A Yeah.</p> <p>21 Q And it's dated, again, the same date, Wednesday, May</p> <p>22 8th, with attachments, and it says, "Mark Owen</p> <p>23 documents."</p> <p>24 A Um-hum.</p> <p>25 Q After you received this request from Alex Jacobs for</p>
<p style="text-align: right;">232</p> <p>1 A I did say that, yeah, as this reflects.</p> <p>2 Q Okay. And do you remember this email exchange?</p> <p>3 A I don't have any independent recollection of it, no.</p> <p>4 Q All right.</p> <p>5 (Exhibit 103</p> <p>6 marked for identification.)</p> <p>7 Q And Exhibit 103 is an email from Alex Jacobs to you</p> <p>8 with the Subject: Mark Owen FOIA, dated May the 8th.</p> <p>9 Do you remember this communication?</p> <p>10 A Yeah, I thought this was odd. I got this from this</p> <p>11 guy who only had but one, I think, interface with him,</p> <p>12 and he was asking me to give him an update on the FOIA</p> <p>13 information.</p> <p>14 Q And he says, "We can't seem to find it in our</p> <p>15 records."</p> <p>16 Had you reported the response you had received by</p> <p>17 that time?</p> <p>18 A As I sit here today, I don't have any independent</p> <p>19 recollection of whether I had received the response or</p> <p>20 not. And I also don't know if I ever responded to</p> <p>21 this. I probably did.</p> <p>22 Q Let me show you what's marked as 106.</p> <p>23 (Exhibit 106</p> <p>24 marked for identification.)</p> <p>25 Q Does 106 appear to be your reply to Mr. Jacobs on the</p>	<p style="text-align: right;">234</p> <p>1 the FOIA stuff, did you ask Ms. Witmer to assemble all</p> <p>2 of those documents for you?</p> <p>3 A I did.</p> <p>4 Q And then behind it is a series of letters addressed to</p> <p>5 you.</p> <p>6 A Right.</p> <p>7 Q Correct?</p> <p>8 A Yeah.</p> <p>9 Q All dealing with the FOIA requests?</p> <p>10 A Yeah. They took my letter and broke down -- "they"</p> <p>11 being -- apparently the FBI took my letter and broke</p> <p>12 down each individual item and prepared a separate</p> <p>13 response.</p> <p>14 Q So they treated it as like 20 requests instead of one</p> <p>15 request?</p> <p>16 A That's my understanding.</p> <p>17 Q Okay. And did you supply this information then to</p> <p>18 Alex after he told you why he wanted it?</p> <p>19 A As I sit here today, I don't know if I did, but I</p> <p>20 think that would be the reason why I asked her to put</p> <p>21 these together for me.</p> <p>22 (Exhibit 105</p> <p>23 marked for identification.)</p> <p>24 Q Let me show you what I've marked as Exhibit 105. This</p> <p>25 would be the day after you received the email from</p>

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<p style="text-align: right;">235</p> <p>1 Alex. Well, actually it's the same day; at the bottom 2 it's dated May 8th. There is an email from you to 3 Ms. Aldorfer, saying, "I have not received any further 4 correspondence from you with regard to the FOIA 5 request submitted in September, with the exception of 6 the following update." 7 A That's weird. 8 Q So after you received Alex's request, did you contact 9 Ms. Aldorfer to follow up on why you had not received 10 a response from the September 12 FOIA requests? 11 A Apparently so. But this email bothers me in that I 12 would not have sent Mr. Nicholson, as a standard 13 procedure, the email from Ms. Aldorfer, because I 14 don't even think they were in the same organization. 15 Maybe they were. Yeah. 16 Q Well, it may be that Ms. Aldorfer gave it to him, not 17 you. Because he is the one that replies, correct? 18 A Yes, he does. He does "cc" her. 19 Q He says, "I'm the officer on your request. Upon 20 completion of the review, documents will be 21 processed." 22 A Oh, okay. My bad. 23 Q So did you ever receive a further response after this 24 May 9 email from Mr. Nicholson? 25 A As I sit here, I have no independent recollection of</p>	<p style="text-align: right;">237</p> <p>1 recollection of it. 2 Q And then there is a reply starting in the middle of 3 the page from Mr. Owen to you, copying Alex Jacobs and 4 Tamera Watt, correct? 5 A Yes. 6 Q Again, dated May 9, "Thanks for the help. Please feel 7 free to communicate with both Alex and Tamera, both 8 cc'd above in to this situation. They are organizing 9 the pertinent info and taking lead on this. Thanks 10 again! Matt." 11 And then he says, "Our next meeting with DoD is 12 the 16th, is there anyway chance we'll hear back from 13 this enquiry before then?" 14 Still on May 9 you reply, "Not likely. What does 15 DoD want from you?" 16 And his reply only to you with no copies, "100% 17 of book profits." 18 And then a reply from you to him, "Bastards. Are 19 they getting McRaven's/Bowden's profits?" 20 And then the last email in the chain from Mr. 21 Owen to you, "Of course not!!! Had a long talk last 22 night with Leon P at an event I was at, and he didn't 23 even know they were still coming after me. WTF." 24 Do you remember that email exchange with Mr. Owen 25 on or about May 9?</p>
<p style="text-align: right;">236</p> <p>1 that, but the fact that it took months doesn't 2 surprise me. The Government moves at a glacial pace 3 for the most part. 4 Q Let me show you Exhibit 107. 5 (Exhibit 107 6 marked for identification.) 7 Q And I will tell you, if you turn to the second page 8 you can see that it is in the chain from your email to 9 Ms. Aldorfer. Mr. Nickels (sic) replied to you, and 10 then there is, on page 1 and going on to page 2, an 11 email from you. It appears to be to Mr. Owen, dated 12 May 9, where you said, "I hope all is well. Contact 13 me at your convenience to discuss the status of your 14 situation." 15 "Alex said you wanted an update on FOIA. I've 16 included below the email exchange. I will shortly 17 send you my request and answer from the FBI for same 18 materials." 19 And then, "For the record, billing for producing 20 materials pursuant to a FOIA request is not sent until 21 the Agency responds with materials. Here, no fees 22 have yet been demanded. This is the status." 23 Did you send that update to Mr. Owen on or about 24 May 9? 25 A Apparently so, but I don't have any independent</p>	<p style="text-align: right;">238</p> <p>1 A I honestly do not. I don't have any independent 2 recollection of it other than what's here. 3 Q Would you disagree with the conclusion that the 4 September, November 2012 and May 2013 communications 5 concerning Freedom of Information Act requests that 6 you sent and then reported on for the benefit of 7 Mr. Bissonnette evidence a continuing attorney-client 8 relationship with him for that period of time and 9 those events? 10 A I think that I was closing up on a last, lingering 11 issue for a relationship that clearly was over by 12 then, and so I was just doing some finish work of 13 something I had started in September, and that is to 14 get the Freedom of Information Act materials to them. 15 Q September to DoD and then November to FBI, correct? 16 A That is correct. 17 Q Mr. Podlaski, are you proud of your representation of 18 Mr. Bissonnette and the job you did for him? 19 A I think so. I provided him with the information that 20 he requested of me and provided him with advice based 21 upon the information that he provided to me. 22 Q Blessed with hindsight, is there anything you would do 23 different? 24 A You know, hindsight being 20/20 and seeing all of the 25 hassle that all of this has occurred, I would have</p>

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<p style="text-align: right;">239</p> <p>1 told him, "Tell your publisher you can't meet your 2 deadline," and that I would recommend as the safest 3 course and emphasize again to him to submit the book, 4 "Because you are" -- as I told him, "You're taking a 5 chance on not submitting the book, and they can always 6 prosecute you and make you spend a lot of money 7 defending yourself, even if you come out a winner in 8 the end." 9 Q Longer for me than for you, but both of us were in law 10 school and were graded. Using a scale of 100, what 11 grade would you give yourself on your representation 12 of Mr. Bissonnette? 13 A I don't understand the relevance of that question, so 14 I don't -- I'm not going to answer. 15 Q Would you give yourself a passing grade? 16 A Same answer. 17 MR. JOHNSTON: Let's take a break and I may be 18 through. 19 THE WITNESS: Okay. 20 MR. JOHNSTON: At least I'm close to through, I 21 know. 22 (Recess) 23 BY MR. JOHNSTON: 24 Q Mr. Podlaski, do you agree with me that up until the 25 time of the signing of the Consent Decree, the</p>	<p style="text-align: right;">241</p> <p>1 state is. 2 Q Let me direct your attention to the Tolling Agreement 3 that was executed in this case back in August of 2014. 4 Did you have any role in the negotiation of the 5 Tolling Agreement? 6 A No, I just -- I spoke to my then-attorney, Robert 7 Shannon, about it, but I didn't -- wasn't actively 8 involved in that. 9 Q Did you have any intent with regard to the -- there 10 was put in to the Tolling Agreement a -- what I will 11 call a non-disparagement clause. Are you aware of 12 that? 13 A Yes. 14 Q Okay. When the document was negotiated, did you have 15 an intent that a violation of the non-disparagement 16 clause would stop tolling as of the date of the 17 violation and terminate the tolling? 18 A Yeah, I recall now. I specifically spoke with Robert 19 Shannon about -- 20 MR. BROWN: Wait a minute. You've got privilege 21 with Mr. Shannon. I don't know whether you're trying 22 to ask him questions about it. I assume you're not, 23 but I'm assuming you read the agreement and were 24 familiar with what it said when it was executed. 25 THE WITNESS: Yeah.</p>
<p style="text-align: right;">240</p> <p>1 situation with the Government could have been fixed 2 for Mr. Bissonnette? 3 A I don't know what you mean by "fixed". 4 Q Make the problem go away, not have to forfeit the 5 money, not be sued by them? 6 A Put in what context? Could have been fixed by whom, 7 when? 8 Q By lawyers representing him. 9 A I don't know -- I guess I need more information than 10 that. It's a very broad statement. Specifically, 11 what are you referring to? Are you saying fixed by 12 me? 13 Q Well, maybe by you. I don't know. Fixed by lawyers 14 representing him dealing with the Government, who 15 could have persuaded the Government that either he 16 didn't have an obligation, if your theories were 17 right, or if he did have an obligation, that it was an 18 innocent mistake made by reliance on a lawyer who 19 relied upon the best information he had available at 20 the time, or any -- or that he was being singled out 21 for disparate treatment as compared to others, or any 22 other theory that the Government might accept? It 23 could have been, if not resolved totally, ameliorated 24 in some fashion? 25 A I don't know. I don't know what the Government's mind</p>	<p style="text-align: right;">242</p> <p>1 Q Was it your understanding -- and I want to get to the 2 60 Minutes interview in a minute. Was it your 3 understanding that if Mr. Bissonnette violated the 4 Tolling Agreement, tolling would stop on the day of 5 that violation? 6 MR. BROWN: I'm going to object to the form of 7 the question as the document speaks for itself, 8 subject to legal interpretation. 9 But you can go ahead and answer. 10 A I'll tell you that was my understanding. 11 Q Now let me move to the 60 Minutes interview. Did you 12 watch the 60 Minutes interview when it aired? 13 A I did. 14 Q And have you watched it since then? 15 A I have not. 16 Q Okay. So you've watched it only the one time? 17 A I believe so. 18 MR. BROWN: For the record, there were two 60 19 Minutes. 20 MR. JOHNSTON: We're talking only about the 2014 21 one. 22 MR. BROWN: Okay. 23 Q Was that your understanding, I was talking only about 24 2014? 25 A Yeah, I think I understood that was implied in your</p>

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<p style="text-align: right;">243</p> <p>1 question.</p> <p>2 Q Sure. In that 60 Minutes interview, did you ever hear</p> <p>3 your name mentioned?</p> <p>4 A No, I did not hear my name mentioned.</p> <p>5 Q Or the name of Carson Boxberger?</p> <p>6 A No, I did not hear the name of Carson Boxberger.</p> <p>7 However, Mr. Bissonnette did say and his attorney said</p> <p>8 that his attorneys gave him bad advice.</p> <p>9 Q And -- but the attorneys to whom they were referring</p> <p>10 were not named in the program, were they?</p> <p>11 A No, but it was contemporaneous all over the internet</p> <p>12 that I had represented him by then.</p> <p>13 Q Following the airing of the 60 Minutes interview, did</p> <p>14 anyone call you to say anything about, "Oh, I saw you</p> <p>15 being talked about on TV last night or last week"?</p> <p>16 A Yes.</p> <p>17 Q Who did?</p> <p>18 A News reporters.</p> <p>19 Q After the interview or before?</p> <p>20 A After.</p> <p>21 Q Okay. And do you know how they got your name?</p> <p>22 A They just went on the internet to see all the</p> <p>23 different news stories about the matter, and it was</p> <p>24 within, I'd say, three to five days afterwards that I</p> <p>25 started getting phone calls.</p>	<p style="text-align: right;">245</p> <p>1 you know, when they got me on the phone, they said</p> <p>2 something, and I said, "You need to talk to my</p> <p>3 attorney." That's all I said.</p> <p>4 Q And that was Mr. Shannon at that time?</p> <p>5 A I believe it was, yeah, Robert Shannon at the time.</p> <p>6 MR. JOHNSTON: All right. We'll reserve the</p> <p>7 remainder of our questions until the time of trial.</p> <p>8</p> <p>9</p> <p>10 AND FURTHER THE DEPONENT SAITH NOT.</p> <p>11</p> <p>12</p> <p>13 KEVIN PODLASKI</p> <p>14</p> <p>15 END TIME: 5:42 P.M.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">244</p> <p>1 Q And do you know if Carson Boxberger got any calls, or</p> <p>2 were they all directed to you?</p> <p>3 A I understand from my former partners that they</p> <p>4 received at least one phone call as well.</p> <p>5 Q Okay. Were you contacted by the -- by a producer at</p> <p>6 60 Minutes prior to the airing?</p> <p>7 A Never.</p> <p>8 Q Mr. Shannon provided a letter to 60 Minutes that was</p> <p>9 aired as a part of the program, correct?</p> <p>10 A I don't recall that. I'm sorry. I just don't</p> <p>11 remember it.</p> <p>12 Q Okay. Did you ever ratify -- you're going to think</p> <p>13 this is silly, but I really have a serious purpose.</p> <p>14 Did you ever confirm or ratify to anyone that you</p> <p>15 were the lawyer Mr. Bissonnette was talking about from</p> <p>16 whom he had received bad advice?</p> <p>17 A I have never publicly stated that. I've not made any</p> <p>18 newspaper -- I've not had anybody interview me, and I</p> <p>19 haven't confirmed that.</p> <p>20 Q And when the press called, you did not confirm for</p> <p>21 them that you were the lawyer they were talking</p> <p>22 about -- or one of the lawyers they were talking</p> <p>23 about?</p> <p>24 A That's correct. I mean, they called me up and a</p> <p>25 couple of them didn't say who they were at first and,</p>	<p style="text-align: right;">246</p> <p>1 STATE OF INDIANA)</p> <p>2)</p> <p>3 COUNTY OF MARION)</p> <p>4</p> <p>5 I, Karen K. Keim, CRR, RPR, CSR-IL, CCR-MO,</p> <p>6 Notary Public, do hereby certify that KEVIN PODLASKI,</p> <p>7 the deponent herein, was first duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the truth in</p> <p>9 the aforementioned matter;</p> <p>10 That the foregoing deposition was taken on</p> <p>11 behalf of the the Plaintiff, at Kightlinger & Gray,</p> <p>12 LLP, One Indiana Square, Suite 300, 211 North</p> <p>13 Pennsylvania Street, Indianapolis, Indiana, on</p> <p>14 November 17, 2016, pursuant to Rule 30 of the Federal</p> <p>15 Rules of Civil Procedure;</p> <p>16 That said deposition was taken down in</p> <p>17 stenograph notes and afterwards reduced to typewriting</p> <p>18 under my direction, and that the typewritten</p> <p>19 transcript is a true record of the testimony given by</p> <p>20 the said deponent; and that signature was reserved by</p> <p>21 the deponent and all parties present;</p> <p>22 That the parties were represented by their</p> <p>23 counsel as aforementioned.</p> <p>24 I do further certify that I am a</p> <p>25 disinterested person in this cause of action, that I</p> <p>am not a relative or attorney of either party or</p>

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1 otherwise interested in the event of this action; and
2 that I am not in the employ of the attorneys for any
3 party.

4 IN WITNESS WHEREOF, I have hereunto set my hand
5 this 21st day of November, 2016.
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8
9

10 Karen K. Keim
11 Certified Realtime Reporter
12 Illinois CSR No. 84-1577
13 Missouri CCR No. 1328
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